

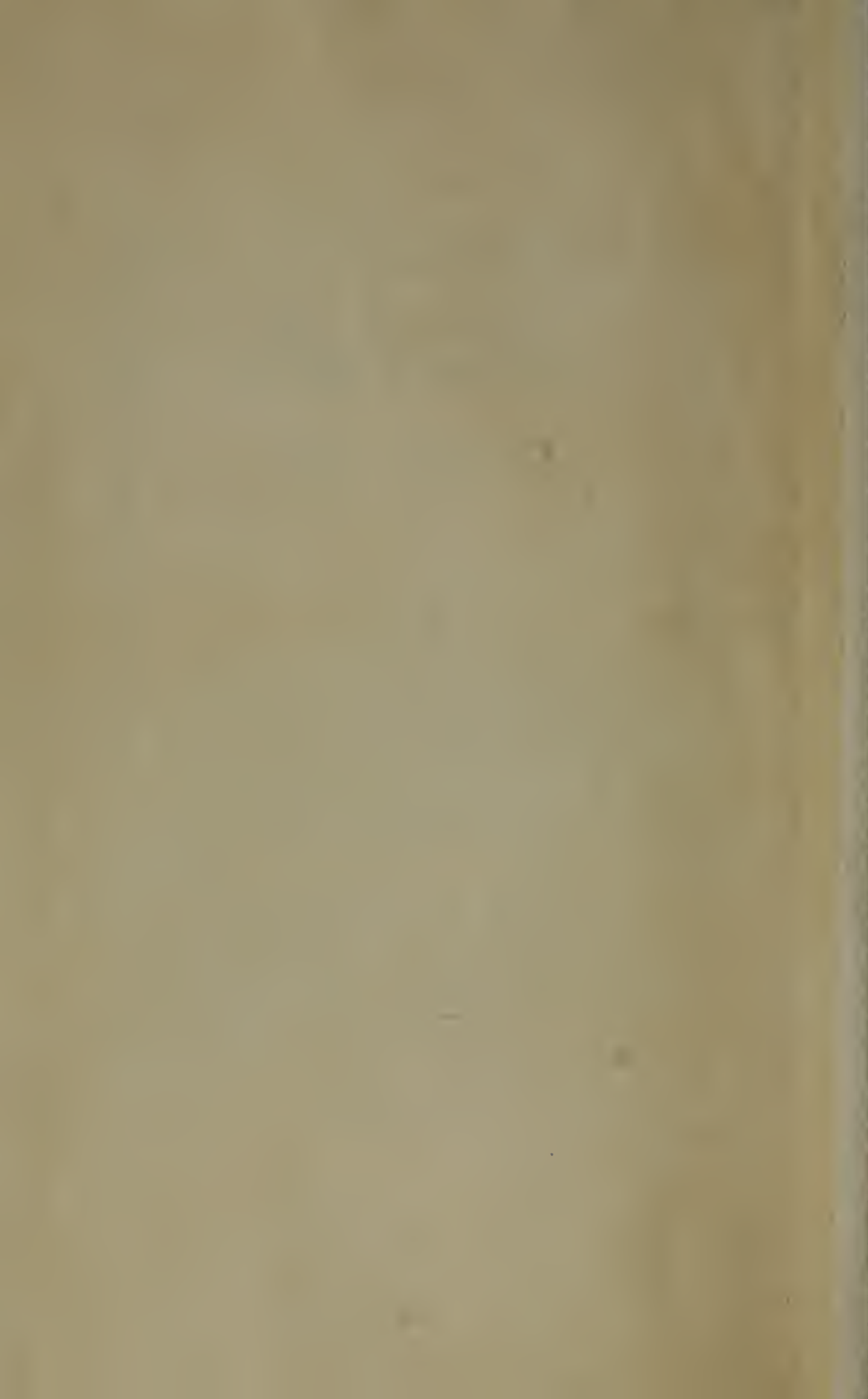
San Francisco Law Library

No. 123005

EXTRACT FROM BY-LAWS

Section 9. No book shall, at any time, be taken from the Library Room to any other place than to some court room of a Court of Record, State or Federal, in the City of San Francisco, or to the Chambers of a Judge of such Court of Record, and then only upon the accountable receipt of some person entitled to the use of the Library. Every such book so taken from the Library, shall be returned on the same day, and in default of such return the party taking the same shall be suspended from all use and privileges of the Library until the return of the book or full compensation is made therefor to the satisfaction of the Trustees.

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No. 10298

United States
Circuit Court of Appeals

For the Ninth Circuit.

NORMAN H. MARSHALL,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Southern District of California,
Central Division

FILED

JUN 26 1933

PAUL F. O'BRIEN,

CLERK

7. *Handwritten text, possibly a signature or name, followed by a checkmark.*

No. 10298

United States
Circuit Court of Appeals
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NORMAN H. MARSHALL,

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VS.

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Transcript of Record

Upon Appeal from the District Court of the United States
for the Southern District of California,
Southern Division

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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Form No. 195

United States District Court, Southern District of
California, Central Division

No. 14988

THE UNITED STATES OF AMERICA,

vs.

HELEN MAY FAWKES, et al.

INDICTMENT

Viol: 18 USC 338 and 88

At a stated term of said court, begun and holden at the City of Los Angeles, County of Los Angeles, within and for the Central Division of the Southern District of California, on the first Monday of February in the year of our Lord one thousand nine hundred and forty-one;

The grand jurors for the United States of America, impaneled and sworn in the Central Division of the Southern District of California, and inquiring for the Southern District of California, upon their oath present:

That prior to the several acts of mailing herein-after alleged:

Helen May Fawkes;
Llewellyn F. Marsh;
Norman H. Marshall;
Albert A. Martinez; and
Charles W. Talbott,

hereinafter called the defendants, whose full and true names other than as herein stated are to the grand jurors unknown, late of the Central Division of the Southern District of California, heretofore to-wit: on or about the year 1938 and thereafter to and including the date of the finding and presentation of this indictment, at Los Angeles County, State of California, and at divers other places to the grand jurors unknown, did devise and intend to devise a scheme and artifice to defraud Joe F. Haillard; George Humbrecht; E. J. Cheatham; Phillip G. Bitner; T. Claggett Jones; Arthur K. Barnes; E. M. Grobel; M. Bright; Bernard Ghio; Richard H. Michaels; Edith I. Fitch; Melville A. Greene; E. F. Bader; R. M. Carr; B. W. Helm; P. A. Berryman; H. R. Browne; Ralph A. Burke; Ralph A. Bergen; L. C. Whitby; R. M. Lawless; James Gregory; Byron Kennedy; E. M. Schutt; Frank R. Hoath; Harold E. Weeks; Milburn Easum, Jr.; George H. [2] Broderick; Cecil I. McReynolds; Earl Williams; Jim Burke; J. E. Waggener; James T. Bostick; Robert Langstaff, and other persons to the grand jurors unknown, and from members of the general public who answered advertisements inserted in various newspapers and other publications, who would sign letters bearing their names and addresses, whose full and true names other than as herein stated are to the grand jurors unknown, and which persons are hereinafter called the persons intended to be defrauded, and to obtain money and property from said persons intended to be defrauded by means

of false and fraudulent pretenses, representations, statements and promises hereinafter set forth, which said money and property said defendants intended to convert to their own use and gain without giving or intending to give the persons intended to be defrauded anything of an equivalent value or anything of value in return for their said money and property, which said scheme and artifice was in substance as follows, to-wit:

That the defendants would insert and cause to be inserted in the classified columns of newspapers throughout the United States advertisements for resident managers in various localities, stating therein that the business connection would be permanent, that the income would reasonably be \$6,500 and more yearly and that a cash deposit in varying amounts, ranging from \$1,500 to \$3,750, was required and would be "secured and returnable";

That the defendants, under the name of Direct-U-Systems, would mail letters to the persons intended to be defrauded who had responded to the advertisements, and acknowledge receipt of the reply, and state that a representative would call to explain the proposition in person, that the proposition was "not a promotional matter", that the company had "nothing to sell" to the applicant, that it was desired to select a person interested in a "permanent connection which increases yearly", and that the company "must virtually guarantee the success" of the person to be selected; that the money obtained by said defendants as a deposit from the franchise holders, as advance rentals, was

not to be [3] returned to the franchise holders but retained by the defendants for their own use; that when a franchise holder found it impossible to make the large earnings promised to him by said defendants, or any earnings at all, and would demand the return of his money, which said defendants had induced him to deposit with the company to guarantee his success, said defendants under the name of Direct-U-Service would refuse to return such deposit of money, or any portion thereof, but would offer to give in lieu thereof a worthless document known as a "re-purchase agreement" wherein they would agree to pay to said franchise holder a percentage of any moneys received by the company from others in the same territory whom said defendants might induce to take a franchise.

That thereafter defendants would contact the persons intended to be defrauded and by oral statements, letters, circulars, printed literature, telegrams, photographs and sales kits would represent and pretend:

That Direct-U-Systems was a corporation organized under the laws of the State of California, was a company of good reputation, of high integrity, of unlimited credit standing and the exclusive manufacturers of electrical directories for display in the lobbies of hotels;

That Direct-U-Systems was in a position to give permanent, lucrative and noncompetitive employment to persons who would agree to become franchise holders and distributors of said directories in given territories, and who would pay sums of money

to the company as advance rentals on a specified number of directories;

That a person who would become a franchise holder would be given the exclusive right to install directories in his territory and to rent space to business concerns thereon at certain stipulated weekly, monthly or yearly rates and to keep all moneys so derived with the exception of that portion agreed upon to be returned to the company as royalties, and that large earnings, pyramiding as the number of boards increased, would be earned thereby by the franchise holder;

That Direct-U-Systems, in consideration of an annual rental fee for each directory furnished, would immediately supply a franchise holder [4] with as many of said devices as needed for placing in hotels and would install and maintain same at all times without cost or expense to the franchise holder; whereas in truth and in fact, as each of the defendants then and there well knew, the Direct-U-Systems was not a company of good reputation, high integrity and unlimited credit standing, and was not the exclusive manufacturer of electrical directories; that it was not in a position to give permanent, lucrative and noncompetitive employment to persons agreeing to become franchise holders; that it would not and could not maintain the same at all times without cost to the franchise holder or at all;

That the success of the franchise holder would be guaranteed and that the money deposited by him

with said company would be secured and returnable; whereas in truth and in fact, as each of said defendants then and there well knew, the success of a franchise holder would not be guaranteed and the money deposited would not be secured and returnable;

That earnings of \$6,500 and more per year were being made by franchise holders holding franchises from the Direct-U-Systems; whereas in truth and in fact, as each of the defendants then and there well knew, no earnings at all were being made by franchise holders and none would be made by others who would take franchises, but on the contrary such franchise holders had suffered and would suffer loss, disappointment and damage through their dealings with Direct-U-Systems;

That the business of Direct-U-Systems was international in scope, that the company had a long record for successful operation and was in a position to render satisfactory and continuous services; whereas in truth and in fact, as each of said defendants then and there well knew, the business was not international in scope and the company did not have a long record or any record at all for successful operation; and in truth and in fact was not in a position to render satisfactory and continuous service, but on the contrary was poorly financed, managed and equipped and was without adequate facilities to comply with its contracts and carry on a successful business; [5]

That electrical directories, manufactured by Direct-U-Systems, were then and there installed and

in operation in the lobbies of the Hotel Multnomah, located in the City of Portland, State of Oregon, and the New Washington Hotel, located in the City of Seattle, State of Washington, and that they were satisfactory, successful and in good order; whereas in truth and in fact, as each of said defendants then and there well knew, directories of Direct-U-Systems were not then or ever had been in said hotels, but that directories manufactured by the defendants at a prior time under the name of National Directory Systems, a company which had failed and gone out of existence, had been in the lobbies of said hotels for a short period of time in 1938 and 1939, and that said directories had not been satisfactory and successful and had not been kept in good order, but on the contrary had been removed from the hotels because they had proven to be a failure;

That the directories of Direct-U-Systems were unique and the first and only advertising medium of this kind to be on the market; whereas in truth and in fact, as each of said defendants then and there well knew, they were not unique and were not the first and only advertising medium of this kind to be on the market, but on the contrary similar devices were then and there on the market and had been on the market for many years, including the directories which they defendants had theretofore marketed and operated unsuccessfully under the name of National Directory Systems;

That the directories of Direct-U-Systems were in

great demand by hotels and business men and that space for the installation of the boards in the lobbies of hotels and subscriptions for advertising thereon were readily obtainable; whereas in truth and in fact, as each of said defendants then and there well knew, said directories were not in demand by hotels and business men and space for the installation of the boards in the lobbies of hotels and subscriptions for advertising thereon were not readily obtainable, or at all;

That the directories of Direct-U-Systems were protected by patents [6] and patents pending and that franchise holders would not have any competition in distributing said directories and selling advertising space thereon; whereas in truth and in fact, as each of said defendants then and there well knew, the directories of Direct-U-Systems were not protected by patents and patents pending and the franchise holders would have no protection whatever against competition, but on the contrary were compelled to compete with others operating in the identical line of business who were so operating at the time the franchises were bought by those whom the defendants intended to defraud and previous thereto as the defendants then and there well knew.

That the directories of Direct-U-Systems would be substantially constructed and free from defects and mechanical errors and would render steady and dependable service; whereas in truth and in fact, as each of said defendants then and there well knew, said directories would not be substantially con-

structed nor free from defects and mechanical errors and would not render satisfactory and dependable service, but on the contrary were subject to frequent interruptions and discontinuances due to imperfect construction;

That the directories of Direct-U-Systems would be shipped to franchise holders promptly upon order; whereas in truth and in fact, as each of said defendants then and there well knew, said directories would not be shipped promptly upon orders but that the shipments would be delayed for long and unreasonable periods of time;

That Direct-U-Systems would maintain and service the directories shipped to franchise holders and installed in hotels and would at all times keep said directories in good working order and mechanical condition; whereas in truth and in fact, as each of said defendants then and there well knew, the company could not and would not maintain and service said directories and could not and would not at all times, or at any time, keep the directories in good working order and mechanical condition.

That said representations, pretenses and promises were made or [7] caused to be made by said defendants to persons intended to be defrauded as a part of said scheme an artifice to defraud said persons intended to be defrauded, as aforesaid; that said representations, pretenses and promises were made and caused to be made by said defendants to said persons intended to be defrauded through and by means of certain oral statements, writings and papers so worded, constructed and expressed as to

deceive, and they were then and there intended to deceive said persons intended to be defrauded and any person who might hear or receive them; which oral statements, circulars, letters, advertisements, bulletins, writings and papers are too numerous and too voluminous to be set forth in this indictment and for that reason the grand jurors, aforesaid, omit the same;

And the grand jurors aforesaid upon their oath aforesaid do further present that said defendants, on or about March 29, 1939, in the Central Division of the Southern District of California, and within the jurisdiction of the United States and this Honorable Court, for the purpose of executing said scheme and artifice to defraud, unlawfully, wilfully and feloniously, did knowingly place and cause to be placed in the United States Post Office at Los Angeles, County of Los Angeles, State of California, to be sent and delivered by the Post Office establishment of the United States, according to the directions thereon, a certain letter in a postpaid envelope addressed to

Mr. R. A. Burke

625 Hyde St

San Francisco, Calif

to-wit: a letter of the following tenor: [8]

(Envelope)

(Stamped)

Direct -U- Systems

General Offices

301 N. Laurel Ave.

Los Angeles, California

Mr. R. A. Burke

625 Hyde St

(Stamped) San Francisco, Calif.

Direct -U- Systems

General Offices

301 N. Laurel Ave.

Los Angeles, California

March 29, 1939

Mr. R. A. Burke

625 Hyde St

San Francisco, Calif

Dear Sir:

We wish to acknowledge receipt of your reply to our recent advertisement for a resident manager.

Our Division Manager, Mr. Robert Johnstone will be in your vicinity within a few days, and we are asking him to advise you of his arrival and to arrange a conference with you.

It is rather difficult to go into details pertaining to our proposition, except to say that this is not a promotional matter and we have nothing to sell you. Ours is a highly ethical and legitimate business proposition, dealing only with the larger business organizations, banks, etc. We are dependent on

selecting a person of good general business experience who is interested in a permanent connection with an assured income which increases yearly. We must virtually guarantee the success of the one we select.

In the meantime we trust that you will make no other connection until our Mr. Johnstone has had the opportunity to see you, as we are confident that a conference will lead to a mutually profitable and pleasant future.

Very truly yours,

DIRECT-U-SYSTEMS

By C. M. TALBOTT

T/A

~~Vice~~ President

An International Service

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [9]

SECOND COUNT

And the grand jurors aforesaid upon their oath aforesaid do further present:

That they do re-allege and incorporate herein, as if again set forth at length, all of the allegations of the first count of this indictment except those allegations alleging the mailing of the letter referred to in said count and describing said letter; that said defendants on or about April 26, 1939, then having devised the scheme and artifice in said first count described, in the Central Division of the Southern District of California and within the

jurisdiction of the United States and this Honorable, Court, for the purpose of executing said scheme and artifice to defraud, did unlawfully, wilfully and feloniously knowingly place and cause to be placed in the United States Post Office at Los Angeles, California, to be sent and delivered by the Post Office establishment of the United States, according to the directions thereon, a certain letter in a postpaid envelope addressed to

Mr. R. A. Burke
625 Hyde Street
San Francisco, Calif

to-wit: a letter of the following tenor: [10]

(Envelope)

(Stamped)

Direct -U- Systems
General Offices
301 N. Laurel Ave.
Los Angeles, California
Air Mail

Mr. R. A. Burke
625 Hyde St
San Francisco, Calif

Direct -U- Systems
General Offices
301 N. Laurel Ave.
Los Angeles, California

April 25, 1939

Mr. R. A. Burke
625 Hyde Street
San Francisco, Calif

Dear Mr. Burke:

Your letter of April 24th addressed to Mr. Talbott has been turned over to me for answer. I have also read a few others.

Taking up the question of hotels. I never told you I would or the company would get you any particular hotel. I did tell you however that I felt sure the company would be able to get you a hotel to start on. That the company would cooperate with you in lining up the hotels and I showed you the letter they sent out to the hotels. I suggested that the El Cortez in my opinion would be a good hotel to start on and you agreed and I felt sure it could be lined up but did not guarantee we would get it or guarantee getting any hotels. You figured yourself the hotels would be easy to get in view of the fact they received a hundred dollars. I also showed you how we figured the number of people that came in and out of the lobby of a hotel by the number of rooms in that hotel. I went over this with your salesmanager very carefully and he brought the hotel situation up while we were discussing the deal. But as far as guaranteeing or

promising a certain number of people in or out of the lobby, we cannot do that nor can anyone do that, as it will vary on the number of rooms and the location of the hotel. The company tells me that they have sent you copies of leases of eight or nine hotels which includes the El Cortez and the Shaw Hotels, so I don't see as you have any kick coming on this question. In fact Mr. Burke, I think the company has certainly cooperated with you. It seems to me that all you have done is complain instead of getting in and working which is your part of the deal. You read the contract over and we went over it quite a few times and I think the company is living up to it as much as is possible for any one to do.

Regarding the patent. There was very little said about that particular fact. I told you it would be a good thing if there was some competition. The fact of the matter is there are no boards like ours in any hotel in San Francisco that I know of and you had plenty of time to go around and visit these hotel lobbies and check up on them. I still don't see what difference it makes whether they are patented or not. If you get a board in a certain hotel they are not going to let another one in. There is no cabinet made that I know of that has the moving card system in the middle and that to me is the outstanding part of the whole cabinet and that is a feature which you liked very much.

If someone comes along after you have taken this franchise and offers you another cabinet without a cent down and no royalty, that is a case of

being too bad that you did not run into it before you went into this and we are not to be blamed for that. I turned down a party there after you took the deal, who phoned me they would take it, but I told them I had already closed the deal there and I told you about that. He might have offered me twice as much, but in view of the fact that I closed with you and had signed the franchise, it would have made no difference if he should offer three times as much. It does not make any difference what someone else offers you, you knew what we offered and what money you had to put up and you had plenty of time to investigate and you did not look to me like a man that needed a guardian. In fact Mr. Burke you looked like a man who would make a success of this proposition, and you assured me that you could, otherwise I would have made a deal with someone else, as I only interviewed about six altogether.

I am sure if you get down to business and go after it you will do some business as there is plenty there and you have the outstanding advertising proposition there is on the market in my opinion, and nearly everyone I talked to thought the same thing. Your salesmanager told me he had looked at a great many different deals and this was the only one that had real merit and if he had not thought so he would not have signed up a contract to take the deal over, and you told me you thought he was a fine fellow and a high class man and I did too. It seems to me that all you do is crab instead of working, even before you have started. There was never any question in your mind but that you

could put it over, otherwise you never would have taken it over. All this talk about what someone else or a competing company offers you has nothing to do with this deal.

Our contract which you read over carefully very plainly states that the company is to receive 15% and that is what they expect and are entitled to and it is fair and equitable and it does not make any difference if someone else comes along and does not require any royalty—this is our deal and the one that you entered into in good faith. I am sure that you will find this company always ready to co-operate with you in every way in their power and that is all that anyone can do, as it is to their interest as well as yours.

Very truly yours,

A. MARTINEZ

An International Service

Direct -U- Systems
General Offices
301 N. Laurel Ave.
Los Angeles, California

April 26, 1939

Mr. R. A. Burke
625 Hyde St
San Francisco, Calif

Dear Mr. Burke:

We are in receipt of your favor of the 25th., and we are attaching herewith Mr. Martinez's answer to same, which we referred to him.

We feel that you are apparently laboring under some false impressions and you are apparently getting some bad information.

There has never been any attempt to state that the Directory System is patented in all details, but we do have an exclusive on the revolving cards which we do have the patents pending on.

It is impossible to cover all of the Directory features in patents as there is nothing basically patentable on this type of equipment with the exception of design patents, but the revolving equipment that we have is patentable.

There is no other competitive equipment that we know of that is making the headway or being accepted by the hotels, as our equipment, and of course you can readily appreciate that there are always people who attempt to imitate any successful project and apparently you have run across someone who is attempting to imitate our system.

The fact that some imitator has offered to you as you claim, a similar service for less money and smaller royalties is of course of no interest to us, and you can rest assured that there is no equipment that can or will give you the cooperation that we will, and they most certainly cannot render this cooperation on a lesser basis than we do.

We have seen one or two people who have attempted to start in competition and we have seen them fold up due to their inability to build the type of equipment or render the service that we do.

You thoroughly understood the proposition that you entered into and we advised you when the con-

tract was received, that if there were any portions of that contract that you were not thoroughly familiar with or any portions of the contract that you did not understand, that you should advise us immediately, so there is no question but that you thoroughly understood the contract. We are not interested in modifying the terms of the contract in any way.

Relative to the dates on the leases. This is inconsequential, as they all call for a definite period of time after the date of installation.

Also, we make no representations that we furnish you any specific number of hotel leases or that we even furnish you any, but we do agree to give you the right to use any leases that we do secure. In your instance we have seven or eight good leases and we would suggest that you start work on this immediately.

You apparently are being misinformed or you are not going to the trouble of checking your statements, as you state that the El Cortez has only 175 rooms, while the Red Book shows very plainly that they have 325 rooms, and the Bellevue has 300 rooms.

If any of the leases that you feel, as you say, have "jokers" or terms contrary to the standard forms, you are not obligated to use these leases, but you can either secure additional leases as provided for in our agreement made in the name of the company, or you can abide by the terms of the leases which in every instance should work to your advantage.

The only differential on the leases that we are willing to absorb and in accordance with our policy as we outlined,—that the hotel leases are based on \$100.00 but at one time we had considered allowing the hotels 10% and adjusting the royalty to assist in adjusting the possible remuneration to the resident manager.

We would suggest very much that you settle down and go to work as you have all the equipment that was agreed upon and you have been rendered more cooperation than we agreed to, but we are extremely interested in assisting you in getting started in any reasonable manner.

We are not interested in entering into a long discussion by correspondence relative to any other advertising medium that you may or may not have been offered, but we have only one proposition and that is the one that was submitted to you.

You had ample time to investigate this proposition and it is one that you entered into with full knowledge as to the contents of the agreement and no misrepresentation was made that we would even get hotels for you, but we are of course extremely interested in securing hotels, and in that way it is possible for us to mutually benefit.

Very truly yours,
DIRECT-U-SYSTEMS

By C. W. TALBOTT

T/F

Encl.

An International Service

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [11]

THIRD COUNT

And the grand jurors aforesaid upon their oath aforesaid do further present:

That they do re-allege and incorporate herein, as if again set forth at length, all of the allegations of the first count of this indictment except those allegations alleging the mailing of the letter referred to in said count and describing said letter; that said defendants on or about November 9, 1939, then having devised the scheme and artifice in said first count described, in the Central Division of the Southern District of California and within the jurisdiction of the United States and this Honorable Court, for the purpose of executing said scheme and artifice to defraud, did unlawfully, wilfully and feloniously knowingly place and cause to be placed in the United States Post Office at Los Angeles, California, to be sent and delivered by the Post Office establishment of the United States, according to the directions thereon, a certain letter in a postpaid envelope addressed to:

Mr. C. I. McReynolds
1010 Vermont Ave., N. W.
Washington, D. C.

to-wit: a letter of the following tenor: [12]

Our new address is
7225 Beverly Boulevard
Los Angeles, California

Direct-U-Systems
General Offices
301 N. Laurel Ave.
Los Angeles, California

November 9, 1939

Mr. C. I. McReynolds
1010 Vermont Ave., N. W.
Washington, D. C.

Dear Mr. McReynolds:

We wish to acknowledge receipt of your favor of the third requesting information relative to the patent situation.

Of course, there are certain features that make it impossible to secure a basic patent, but we do have the patent pending on other features including the card-changing equipment.

As you undoubtedly appreciate, it is always much more advantageous to keep a patent pending as long as is possible without divulging to the public what coverage is made by your patents.

We can assure you that you will have no difficulty in regards to the patents, and we stand back of them and it is our obligation to take care of the installation and maintain the equipment.

We do not feel that this point can be advantageously used one way or the other in reference to your sales.

We are having a display at the National Hotel Convention this week and have shipped them a very beautiful installation and have written the chain hotels throughout the country, many of which have hotels in your area, which we feel sure will be quite advantageous in the event that you desire any additional hotels.

Very truly yours,

DIRECT-U-SYSTEMS

By C. W. TALBOTT

T:DR

An International Service

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [13]

FOURTH COUNT

And the grand jurors aforesaid upon their oath aforesaid do further present:

That they do re-allege and incorporate herein, as if again set forth at length, all of the allegations of the first count of this indictment except those allegations alleging the mailing of the letter referred to in said count and describing said letter; that said defendants on or about February 8, 1940, then having devised the scheme and artifice in said first count described, in the Central Division of the Southern District of California and within the jurisdiction of the United States and this Honorable Court, for the purpose of executing said scheme and artifice to defraud, did unlawfully, wilfully and

feloniously knowingly place and cause to be placed in the United States Post Office at Los Angeles, California, to be sent and delivered by the Post Office establishment of the United States, according to the directions thereon, a certain letter in a postpaid envelope addressed to:

Mr. E. M. Schutt,
1026 Williamson Blvd.,
Cleveland, Ohio

to-wit: a letter of the following tenor: [14]

Direct-U-Systems
General Offices
Direct-U-Building—7225 Beverly Blvd.
Los Angeles, California

February 8, 1940

Mr. E. M. Schutt,
1026 Williamson Blvd.,
Cleveland, Ohio

Dear Mr. Schutt:

I wish to acknowledge your letter of the 30th and regret that it has not been answered sooner, but we have had quite a lot of illness in our organization.

We are extremely sorry that you are having so much difficulty in getting started and we feel that you are letting some implications get you unduly worried. As far as anyone having identical equipment to ours, including the Rotating machine, we would appreciate your sending us the information on to us as we have never run into it. It is possible, of course, for someone to reproduce an electric direc-

tory but they are not comparable in the value that is rendered to the merchant. We have run into definite cases where the salesman of the competitor wanted to quit and work on our proposition because they could see the many advantages.

We are not interested, and you should not be interested in the other fellow and his arrangement. You can rest assured that you have equipment that has much more of an appeal than any competitor can possibly have. If you will send us a list of the hotels that you desire to have leases we will write them direct telling them of the many advantages, we feel that the standing of the company and your personal standing, we should have no difficulty in getting them to reconsider in giving you a lease for an installation.

As far as the Better Business Bureau, they are perfectly at liberty to make any investigation they desire as our company is operated on an extremely ethical basis. We, of course, are not in a position either to know or state about any competitor.

We appreciate as well as you must, that it is quite unpleasant on the part of the Better Business Bureau to go out of their way (as you have conveyed the thought) to create trouble for you, as their purpose should be as an investigating organization and not a trouble-making one.

In reference to the National Directories System, we have very carefully investigated their connection with the Robot Map Service and the president of the Robot Map secured the control of the National Directories System a couple of years ago. We know

that they are constantly being tied in with law suits on the National Directories set-up and that they are one and the same company. Of course, we have no information as to the truth of these assertions and there is no way we can secure this information for you.

We did have some information a month or so ago that the salesman of the Robot Company had quit and they were ready to fold up; but again, we are not in a position to substantiate these facts other than we can say it is heresay.

The Direct-U-Systems, nor any of its officers have any connection with the National Directories or the Robot Map Service.

Several years ago the writer did have a financial interest in the National Directories but sold all of his holdings in March, 1938, to Mr. Young who is the president of the Robot Map Service.

Outside of this, there is no other information we can give you with the exception that the Direct-U-Systems has exclusive features that no other company has, and also that the company operates on an extremely ethical basis.

If you do not feel that you have an opportunity to go ahead with this work, of course we will endeavor to work out some arrangement to secure someone to take over your contract which, as you know, provides that you have paid the advance lease rental on two Systems to be delivered to you in accordance with your contract and when you furnish us with the necessary data to complete the equipment.

We feel confident that a man of the type that you are—judging from the recommendations of Mr. Morgan, that if you would apply yourself to the development of your territory and let the competitor do likewise or as he desires, you will be successful. We suggest that you forget all about the other fellow and go ahead with your business which cannot help but be productive.

Yours truly,

DIRECT-U-SYSTEMS

By C W TALBOTT

nh

An International Service

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [15]

FIFTH COUNT

And the grand jurors aforesaid upon their oath aforesaid do further present:

That they do re-allege and incorporate herein, as if again set forth at length, all of the allegations of the first count of this indictment except those allegations alleging the mailing of the letter referred to in said count and describing said letter; that said defendants on or about May 1, 1940, then having devised the scheme and artifice in said first count described, in the Central Division of the Southern District of California and within the jurisdiction of the United States and this Honorable Court, for the purpose of executing said scheme and artifice to defraud, did unlawfully, wilfully and feloniously

knowingly place and cause to be placed in the United States Post Office at Los Angeles, California, to be sent and delivered by the Post Office establishment of the United States, according to the directions thereon, a certain letter in a postpaid envelope addressed to:

Mr. Harold E. Weeks,
160 Fifth Avenue,
New York City

to-wit: a letter of the following tenor:[16]

Direct-U-Systems
General Offices
Direct-U-Building—7225 Beverly Blvd.
Los Angeles, California

May 1, 1940

Mr. Harold E. Weeks,
160 Fifth Avenue,
New York City

Dear Mr. Weeks:

We received your telegram giving us the information that the Waldorf installation was made by the National Directory Systems for that hotel while the writer was president of the old company.

This is all news to us as the writer has had no interest in the National Directory Systems since the early part of 1938—and to the best of his recollection, there was never any lease on the Waldorf Astoria. Of course, any operation of the National Directory is out of any jurisdiction or suggestion of the writer. However, if you will send us the

names of the advertisers on there it is quite possible that we could get some of the creditors for the old National Directory Systems to demand that the payments be made direct to them. This, of course, you can readily appreciate will stop any operations in a hurry on the National Directory.

In reference to the rotating machine—we are tooling up to get this equipment in manufacture. But as we requested some time ago, if you will give us your reaction as to any changes, etc., we would appreciate it very much. We were advised by Mr. Musorofiti that the operation was very good in the Park Central—in fact, it was running satisfactorily. However, he recommended and suggested that we furnish one of the new rotators, which we intend to do.

We asked you sometime ago to send us the copy on some of your cards, and we would be only too happy to cooperate and would have some of them re-made here to take care of the damaging there.

We have not been able to get any reports as to the additional sales of any space on either the Park Central or on the Imperial—nor have we been able to get any cooperation from you in furnishing us the data we requested so we could prepare some special selling material for you.

We are quite at loss to understand your total lack of cooperation and your indifference to this situation, as we are extremely anxious to work out and cooperate with you in every way possible. You can readily appreciate that the only way we can

hope to profit by this is through your installations and the royalties which would be forthcoming.

If you will go through your file for the past few months and furnish us the information we requested, we will be able to furnish you some additional selling helps which we believe will be quite advantageous to you.

In the meanwhile, we are proceeding with the development of the new rotating machine. We assume from the information that Mr. Musorofiti has furnished us and your lack of advising us to the contrary—that the rotating machine is functioning perfectly in the Imperial and there would be no changes suggested.

We would appreciate it, however, if you would have a photograph made of the installation in the Imperial so that we could keep our records complete.

If there is any other cooperation and assistance we can render you, please do not hesitate to call upon us. We are extremely interested in your success and will cooperate with you in any way that is in line with good business.

With the kindest personal regards, we are

Yours very truly,

DIRECT-U-SYSTEMS

By C W TALBOTT

President

CWT/nh

An International Service

[Stamped]: Received May 3 1940

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [17]

SIXTH COUNT

And the grand jurors aforesaid upon their oath aforesaid do further present:

That they do re-allege and incorporate herein, as if again set forth at length, all of the allegations of the first count of this indictment except those allegations alleging the mailing of the letter referred to in said count and describing said letter; that said defendants on or about June 7, 1940, then having devised the scheme and artifice in said first count described, in the Central Division of the Southern District of California and within the jurisdiction of the United States and this Honorable Court, for the purpose of executing said scheme and artifice to defraud, did unlawfully, wilfully and feloniously knowingly place and cause to be placed in the United States Post Office at Los Angeles, California, to be sent and delivered by the Post Office establishment of the United States, according to the directions thereon, a certain letter in a postpaid envelope addressed to:

Mr. Byron Kennedy,
604 West Columbus Ave.
Bellefontaine, Ohio.

to-wit: a letter of the following tenor: [18]

(Envelope)

Direct-U-Systems

General Offices

Direct-U-Building—7225 Beverly Blvd.

Los Angeles, California

[Stamped]: Los Angeles, Jan 7 8 PM 1940 Calif
Air Mail Special Delivery Fee Paid 10 Cents Fee
Claimed by Office of First Address

Mr Byron Kennedy,
604 West Columbus Ave.
Bellefontaine, Ohio.

Direct-U-Systems

General Offices

Direct-U-Building—7225 Beverly Blvd.

Los Angeles, California

June 7, 1940

Mr Byron Kennedy
604 West Columbus Ave.,
Bellefontaine, Ohio.

Dear Mr. Kennedy:

We wish to acknowledge receipt of the agreement entered into on June 6th with Mr L. F. Marsh, which covers the installations of Direct-U-Systems in certain counties in Ohio as set forth in the agreement.

We also wish to acknowledge receipt of your check in the amount of \$750.00 for which we thank you. This \$750.00 as provided for in the contract, covers the advance lease rental on one Direct-U-System.

We take this opportunity of welcoming you not only as a new operator and new unit of our service,

but also with special interest because of the recommendations that Mr Marsh has personally written us regarding you.

Mr Marsh has undoubtedly that you that the attitude and the ability of our lessees is a matter of great importance to us. We wish to take this opportunity to assure you that the success of your territory is of prime interest to us, as it is only through your success that we can profit, and we desire to have you feel that it is our sincere desire to cooperate and assist you in every way possible.

Direct-U-Systems offer an unusual opportunity for a dignified, permanent business, as it fills and furnishes a service that is appreciated by the traveling public, and the hotel man is very much interested in it. He appreciates that through Direct-U-Systems he can render a very beneficial and helpful service to his guests.

The merchant and professional man appreciates the fact that through Direct-U-Systems he can reach the class of people who are conceded to be the money spending public, in a new and unique manner.

Your contract and printing copy arrived to late for us to enclose samples of your letterheads but will endeavor to get them in the mail in the morning.

We would like to have you send us a list of approximately 200 names and addresses of the outstanding merchants and professional men in your community, so that we may prepare the advance letters to be sent to them prior to your salesman contacting them. We feel that this is very helpful as it eliminates

a great deal of lost time and sales resistance for your salesmen.

You and each of our lessees are the proprietors of an independent business and will have complete charge of it, and you will profit exactly in the same proportion. So obviously we have good reason to be anxious to know that our operators shall have every qualification to make it successful, and we have reason to feel and believe that you can do this.

We are enclosing a District Manager's manual of procedure, as well as a sales manual. This will give you a great deal of information and suggestions on the program that we have found to be a successful method of operation—which has been proven by other operators. Kindly send us the list of names as outlined above, and other data which is requested in our procedure manual, as soon as possible, as this will assist in eliminating all possible delay.

We are confident that Mr Marsh has explained each portion of our agreement with you, but if there is any point or provision that is not thoroughly understood by you, please do not hesitate to write us immediately so that we may clarify it. It is our desire to have this affiliation be mutually pleasant, profitable and of long duration. It is with this thought in mind that we have prepared our agreement in a very concise and clearly understood manner as it is our desire that our future will be occupied in the development of more business and beautiful installations and we desire to have no misunderstandings.

We want to assure you that we are very happy to have you join our organization and we feel that you will develop your area so that it will be one of the outstanding districts in the United States.

With kindest personal regards and assuring you that we are interested in cooperating in every way possible, we are,

Very truly yours

DIRECT-U-SYSTEMS

By C W TALBOTT,

President.

T/N

An International Service

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [19]

SEVENTH COUNT

And the grand jurors aforesaid upon their oath aforesaid do further present:

That they do re-allege and incorporate herein, as if again set forth at length, all of the allegations of the first count of this indictment except those allegations alleging the mailing of the letter referred to in said count and describing said letter; that said defendants on or about July 18, 1940, then having devised the scheme and artifice in said first count described, in the Central Division of the Southern District of California and within the jurisdiction of the United States and this Honorable Court, for the purpose of executing said scheme and artifice to defraud, did unlawfully, wilfully

and feloniously knowingly place and cause to be placed in the United States Post Office at Los Angeles, California, to be sent and delivered by the Post Office establishment of the United States, according to the directions thereon, a certain letter in a postpaid envelope addressed to:

Mr. George H. Broderick
409 Griswold Street
Detroit, Michigan

to-wit: a letter of the following tenor: [20]

Direct-U-Systems
General Offices
Direct-U-Building—7225 Beverly Blvd.
Los Angeles, California

July 18, 1940

Mr. George H. Broderick
409 Griswold Street
Detroit, Michigan

Dear Mr. Broderick:

We wish to acknowledge your recent letter and can assure you that we have no intentions of entering into a lengthy amount of correspondence relative to our past business arrangements.

You voluntarily requested the cancellation of your agreement, and you made many statements which of course we all know are not true, and are entirely beyond the matter at hand.

You were thoroughly familiar with the agreement which you entered into, which was a lease agreement

whereby you leased certain equipment from this company which was to be of standard type, and not to be designed to fill your own personal ideas, and we have your letters in which you stated that the equipment functioned perfectly as it was designed, and by using the material which we insisted upon.

There were no misrepresentations as to your entering into the contract, as you made every investigation that you could think of, and made every point that was not clearly defined, you had it defined in your letter so there would be no misunderstanding.

We are quite confident that there were no representations made as to what any of the lessees were making, as that would be of no interest to you. We are confident that the area which you have, would make more than the amount that a good business man would feel was a fair income, and there is most certainly no reason why you are not making a success in that particular area. You have one of the most beautiful installations in, in a popular hotel but you do not choose to operate on a basis that is in line with good advertising principles.

The losses that you are causing us by your continued refusal to develop that area, is of course great. We have your own statement that the equipment does work perfectly and is working perfectly, as well as we have had numerous checks on the operations in the hotel by various people from whom we have affidavits.

We are again making a demand that you return the replaced rotating machine which you are unlaw-

fully and illegally retaining, which was obtained by you on subterfuge, and we demand that you return this to us without further delay.

We have always endeavored to cooperate and work with you in every way that is possible, and we regret very much that you have taken this attitude.

Very truly yours,

DIRECT-U-SYSTEMS

By C. W. TALBOTT

T/F

An International Service

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [21]

EIGHTH COUNT

And the grand jurors aforesaid upon their oath aforesaid do further present:

That they do re-allege and incorporate herein, as if again set forth at length, all of the allegations of the first count of this indictment except those allegations alleging the mailing of the letter referred to in said count and describing said letter; that said defendants on or about August 8, 1940, then having devised the scheme and artifice in said first count described, in the Central Division of the Southern District of California and within the jurisdiction of the United States and this Honorable Court, for the purpose of executing said scheme and artifice to defraud, did unlawfully, wilfully and feloniously knowingly place and cause to be placed in the United States Post Office at Los Angeles, California, to

be sent and delivered by the Post Office establishment of the United States, according to the directions thereon, a certain letter in a postpaid envelope addressed to:

Mr. Harold E. Weeks
160 Fifth Av.
New York City.

to-wit: a letter of the following tenor: [22]

Direct-U-Systems
General Offices
Direct-U-Building—7225 Beverly Blvd.
Los Angeles, California

August 8, 1940

Mr. Harold E. Weeks
160 Fifth Ave.
New York City.

Dear Mr Weeks:

We wish to acknowledge receipt of your favors of the 2nd and 5th and wish to assure you that we have no desire to enter into any controversy with you nor do we want to have any hard feeling or any misunderstandings with you as it is so foolish as we are both interested in reaching the same goal, the installation and successful operations of Direct-U-Systems in your area.

We do want you to know that we are sincerely endeavoring to render you the best service that we know how and build you the best equipment that we humanly can. Our sincere endeavor is to assist and co-operate with you in everyway possible and

it is possible that during this time when so many things seem to go wrong that all of our nerves become somewhat on edge. Possibly we have both taken things that have been written in a way entirely different than the true since in which they were meant and to offend you is the farthest from our intent and we do hereby extend our apologies.

In every business that you must depend on others to do your contacting many reports are sent in many are no doubt tendered more in a nature of excuses to cover shortcomings and we passed on to you telling you what we had heard and we are quite glad to be assured by you that they were not true as we felt that you were not the type of a person that would knowingly hurt us. As far as we are concerned we consider the matter closed with our regrets that they were even called to your attention.

The Pacific National Advertising Agency is just one of several hundred advertising agencies that handle space for various newspapers for the commissions that the papers pay them and they with several other firms rent space in the same building that we are located.

As far as Mr N. H. Marshall is concerned he is not employed by us nor has he been but is well known by us as he was at the time the old National was operating most successfully as the financial records will show it was when he handled the sales and thru his efforts and knowledge and hard work the most successful development was done not only by the company but by the lessees. When he left the old National due to some personal and domestic

difficulties their decline started and when it reached a point that the writer did not care to be associated he disposed of his interests and the old investors realized that they had made a mistake and we are sure that if you knew him we are sure that you would agree. He is interested in some educational business but we are sure that if you will write him addressed P. O. Box ----? Hollywood Cal. that it will be forwarded to him and he will, we feel, be more than glad to assist in rectifying any reports that may be damaging to you or this company.

We are at loss to understand what connections any report on him may have with your selling any of your prospects as he has never had any connections with this company but we will say, frankly, that he can have a position here at anytime and we are equally sure that if you knew him you would give him serious consideration as to the handling of your sales.

Your prospects are doing business with you individually and this company has nothing to do with it nor does anyone else as we can see it and we feel that all you have to do is to establish yourself in their eyes as your are the lessee and operator of Direct-U-Systems in New York City.

As far as we are concerned we want to consider any misunderstandings in the past a closed book and extend ourselves to developing a future that will more than offset any unpleasantness.

We are very happy that you are well pleased with the Governor Clinton installation as we can assure you that we have truly tried to build it as

near perfect as possible and we do regret that there was anything to do to the machine and we are confident that it will function perfectly. We do appreciate the fact that you are sincere in your desire to make helpful suggestions to perfect the equipment and if we have ever wrote otherwise please accept our apologies again.

We are sure that you appreciate that some arrangements must be made to shut the motor off a few hours each day and using Direct Current a time switch can not be used.

We are rushing the other systems as fast as we can but as we have explained some of the vital parts are being held up by the war such as push buttons and certain other materials. We have the cabinets completed printing, rotating machines ready etc as are quite interested in getting them to you as soon as possible.

We would appreciate it greatly if you would have a photo made and if possible to include the hotel manager as we have a program that we feel we assist you materially in your sales if you will co-operate along these lines.

With the kindest personal regards and again assuring you that we hope any unpleasantness in the past will be overlooked as a closed book, we are,

Very truly yours

DIRECT-U-SYSTEMS

By: C W TALBOTT

T/N

An International Service

[Stamped]: Received Aug 12 1940 Ans'd ----

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [23]

NINTH COUNT

And the grand jurors aforesaid upon their oath aforesaid do further present :

That they do re-allege and incorporate herein, as if again set forth at length, all of the allegations of the first count of this indictment except those allegations alleging the mailing of the letter referred to in said count and describing said letter; that said defendants on or about November 6, 1940, then having devised the scheme and artifice in said first count described, in the Central Division of the Southern District of California and within the jurisdiction of the United States and this Honorable Court, for the purpose of executing said scheme and artifice to defraud, did unlawfully, wilfully and feloniously knowingly place and cause to be placed in the United States Post Office at Los Angeles, California, to be sent and delivered by the Post Office establishment of the United States, according to the directions thereon, a certain letter in a postpaid envelope addressed to :

Mr. Arthur K. Barnes,
401 Scott Place
Pasadena, California

to-wit: a letter of the following tenor: [24]

Direct-U-Systems
General Offices
Direct-U-Building—7225 Beverly Blvd.
Los Angeles, California

November

~~October~~ 6, 1940

Mr. Arthur K. Barnes
401 Scott Place
Pasadena, California

Dear Mr. Barnes:

We wish to acknowledge receipt of the agreement entered into on November 6th with Mr. L. F. Marsh, which covers the installation of Direct-U-Systems in territory adjacent to Los Angeles as outlined in the contract.

We also wish to acknowledge receipt of your check in the amount of \$1500 for which we thank you. This \$1500 as provided for in the contract, covers the advance lease rental on two Direct-U-Systems.

We wish to take this opportunity of welcoming you not only as a new operator and new unit of our service, but also with special interest because of our knowledge of your ability.

Mr. Marsh has undoubtedly told you that the attitude and the ability of our lessees is a matter of great importance to us. We wish to take this opportunity to assure you that the success of your territory is of prime interest to us, as it is only through your success that we can profit, and we desire to have you feel that it is our sincere desire to cooperate and assist you in every way possible.

Direct-U-Systems offer an unusual opportunity for a dignified permanent business, as it fills and furnishes a service that is appreciated by the traveling public, and the hotel man is very much interested in it. He appreciates that through Direct-U-Systems he can render a very beneficial and helpful service to his guests.

The merchant and professional man appreciates the fact that through Direct-U-Systems he can reach the class of people who are conceded to be the money spending public, in a new and unique manner.

We have the tentative list of outstanding merchants and professional men in Long Beach which we are preparing for you in order that the advance letters may be prepared. We feel that these letters will be very helpful as they eliminate a great deal of lost time and sales resistance for your salesmen.

You and each of our lessees are the proprietors of an independent business and will have complete charge of it, and you will profit exactly in the same proportion. So obviously we have good reason to be anxious to know that our operators shall have every qualification to make it successful, and we have reason to feel and believe that you can do this.

We are enclosing a District Manager's Manual of Procedure, which will give you a great deal of information and suggestions on the program which we have found to be a successful method of operation, and one which has been proven by other operators.

We are confident that Mr. Marsh has explained

each portion of our agreement with you, but if there is any point or provision that is not thoroughly understood by you, please do not hesitate to write us immediately, so that we may clarify it. It is our desire that this affiliation be mutually pleasant, profitable and of long duration. It is with this thought in mind that we have prepared our agreement in a very concise and clearly understood manner, as it is our desire that our future will be occupied in the development of more business and beautiful installations, and we desire to have no misunderstandings.

We want to assure you that we are very happy to have you join our organization and we feel that you will develop your area so that it will be one of the outstanding districts in the United States.

With kindest personal regards and assuring you that we are interested in cooperating in every way possible, we are

Very truly yours,

DIRECT-U-SYSTEMS

By C W TALBOTT

President

T/F

Encl.

An International Service

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [25]

TENTH COUNT

And the grand jurors aforesaid upon their oath aforesaid do further present:

That they do re-allege and incorporate herein, as if again set forth at length, all of the allegations of the first count of this indictment except those allegations alleging the mailing of the letter referred to in said count and describing said letter; that said defendants on or about November 9, 1940, then having devised the scheme and artifice in said first count described, in the Central Division of the Southern District of California and within the jurisdiction of the United States and this Honorable Court, for the purpose of executing said scheme and artifice to defraud, did unlawfully, wilfully and feloniously knowingly place and cause to be placed in the United States Post Office at Los Angeles, California, to be sent and delivered by the Post Office establishment of the United States, according to the directions thereon, a certain letter in a post-paid envelope addressed to:

Mr. Ralph H. Bergen
614 McLaughlin Avenue
Richmond, California

to-wit: a letter of the following tenor: [26]

Direct-U-Systems
General Offices
Direct-U-Building—7225 Beverly Blvd.
Los Angeles, California

November 9, 1940

Mr. Ralph H. Bergen
614 McLaughlin Avenue
Richmond, California

Dear Mr. Bergen:

We wish to acknowledge receipt of the agreement entered into on November 6th with Mr. Rolland R. Bryant, which covers the installation of Direct-U-Systems in San Francisco and San Mateo counties, inclusive.

We also wish to acknowledge receipt of your check in the amount of \$2250, for which we thank you. This \$2250 as provided for in the contract, covers the advance lease rental on 3 Direct-U-Systems. We also wish to acknowledge receipt of your check in the amount of \$300.00 for one Direct-U-Display, for San Francisco, San Mateo, Alameda and Contra Costa Counties, for which we also thank you.

We wish to take this opportunity of welcoming you not only as a new operator and new unit of our service, but also with special interest because of our knowledge of your ability.

As we have told you, the attitude and the ability of our lessees is a matter of great importance to us. We wish to take this opportunity to assure you that the success of your territory is of prime interest to us, as it is only through your success that we

can profit, and we desire to have you feel that it is our sincere desire to cooperate and assist you in every way possible.

Direct-U-Systems offer an unusual opportunity for a dignified permanent business, as it fills and furnishes a service that is appreciated by the traveling public, and the hotel man is very much interested in it. He appreciates that through Direct-U-Systems he can render a very beneficial and helpful service to his guests.

The merchant and professional man appreciates the fact that through Direct-U-Systems he can reach the class of people who are conceded to be the money spending public, in a new and unique manner.

Mr. Bryant informs us that you are preparing a list of approximately two hundred names of outstanding merchants and professional men, in order that we may prepare the advance letters for them.

We feel that these letters will be very helpful as they eliminate a great deal of lost time and sales resistance for your salesmen.

You and each of our lessees are the proprietors of an independent business and will have complete charge of it, and you will profit exactly in the same proportion. So obviously we have good reason to be anxious to know that our operators shall have every qualification to make it successful, and we have reason to feel and believe that you can do this.

We are enclosing a District Manager's Manual of Procedure, which will give you a great deal of information and suggestions on the program which we have found to be a successful method of opera-

tion, and one which has been proven by other operators.

We are confident that you understand each portion of our agreement with you, but if there is any point or provision that is not thoroughly understood by you, please do not hesitate to write us immediately, so that we may clarify it. It is our desire that this affiliation be mutually pleasant, profitable and of long duration. It is with this thought in mind that we have prepared our agreement in a very concise and clearly understood manner, as it is our desire that our future will be occupied in the development of more business and beautiful installations, and we desire to have no misunderstandings.

We want to assure you that we appreciate your making the trip down here to see us, and it has been a great pleasure to meet you, and we are exceedingly happy to have you join our organization. We are confident that with your ability, you will develop your area so that it will be one of the outstanding districts in the United States.

With kindest personal regards and assuring you that we are interested in cooperation in every way possible, we are,

Very truly yours,

DIRECT-U-SYSTEMS

By C W TALBOTT,

President

T/F

Encl.

An International Service

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [27]

ELEVENTH COUNT

And the grand jurors aforesaid upon their oath aforesaid do further present:

That

Helen May Fawkes;
Llewellyn F. Marsh;
Norman H. Marshall;
Albert A. Martinez; and
Charles W. Talbot,

the identical persons named in the first and preceding counts of this indictment, and hereinafter referred to as the defendants, heretofore to-wit: prior to the dates of the commission of the overt acts hereinafter alleged, and continuously thereafter down to and including the date of the filing and return of this indictment, did knowingly, wilfully, unlawfully, corruptly, fraudulently and feloniously conspire, combine, confederate and agree among themselves and with each other, and with other persons whose names are to the grand jurors unknown, to commit certain offenses against the United States, that is to say, that they, said defendants, did so knowingly, wilfully, unlawfully, corruptly and feloniously conspire, combine, confederate and agree among themselves and with each other, and with other persons whose names are to the grand jurors unknown as aforesaid, to

devise a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations and promises from those persons described and named in the first count of this indictment as the persons intended to be defrauded, and for the purpose of executing such scheme and artifice to place and cause to be placed in the Post Office establishment of the United States letters, circulars, advertisements, newspapers, bulletins and other mail matter addressed to various and sundry persons residing within the United States, the names and addresses of said persons, other than as stated in the preceding counts [28] of this indictment, being to the grand jurors unknown;

That said scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations and promises, which said defendants so conspired to devise and execute as aforesaid as more particularly set forth and described in the first count of this indictment, are hereby re-alleged and re-incorporated herein as if again set forth at length;

And the grand jurors aforesaid upon their oath aforesaid do further charge and present that at the hereinafter stated times, in pursuance of and in furtherance of, in execution of and for the purpose of carrying out and to effect the object, design and purposes of said conspiracy, combination, confederation and agreement aforesaid the hereinafter named defendants did commit the following overt acts:

1. That on or about April 19, 1940 defendant Helen May Fawkes, at Los Angeles, California, did endorse over to Rosa and James Gioga for collection a certain check for \$375.00, dated April 20, 1940, payable to Direct-U-Systems, Inc., and drawn on the Second National Bank of Beloit, Wisconsin by B. W. Helm.

2. That on or about November 27, 1938, at Madison, Wisconsin, defendant Albert A. Martinez did cause to be written and did sign a certain letter addressed to Mr. James Gregory, 317 West Mufflin Street, Madison, Wisconsin.

3. That on or about April 23, 1940, at South Bend, Indiana, defendant Llewellyn F. Marsh did receive from Richard H. Michaels a check for \$1500.00 and did transmit the same by mail to Direct-U-Systems, Inc., in Los Angeles, California.

4. That on or about April 30, 1940, at South Bend, Indiana, defendants Llewellyn F. Marsh and Albert A. Martinez did discuss with Richard H. Michaels the matter of a franchise to install directories in the State of Indiana.

4. That on or about December 14, 1938, at Los Angeles, California, defendant Charles W. Talbott did prepare for mailing by insured parcel [29] post to Bright Advertising Co., 408 Niccollet Ave., Minneapolis, Minn., a package of supplies including three reproductions of a letter from Hotel Multnomah of Portland, Oregon and three reproductions of a letter from New Washington Hotel of Seattle, Washington, dated July 22, 1938 and July 25,

1938, respectively, addressed to Mr. A. Kane, Pioneer Bldg., Los Angeles, California.

6. That on or about October 23, 1940, at Los Angeles, California, defendant Charles W. Talbott did prepare a certain letter addressed to Arthur K. Barnes, 401 Scott Place, Pasadena, California, and did subscribe and acknowledge the same before defendant Norman H. Marshall as a notary public.

7. That on or about June 5, 1940, at Los Angeles, California, defendant Norman H. Marshall did prepare a certain letter addressed to Better Business Bureau, Tulsa, Oklahoma, and did sign thereto the name of defendant Charles W. Talbott.

8. That on or about September 30, 1940, at Los Angeles, California, defendant Norman H. Marshall did prepare a certain letter addressed to Mr. Byron Kennedy, 215 Keith Bldg., Dayton, Ohio, and did sign thereto the name of defendant Charles W. Talbott.

9. That on or about May 13, 1940, at Los Angeles, California, defendant Helen May Fawkes did prepare and sign a certain letter addressed to Mr. J. E. Waggener, 5601 Wornall Road., Kansas City, Mo.

10. That on or about August 19, 1938, at Oakland, California, defendant Albert A. Martinez did sign a document described as an "agreement" wherein H. R. Browne was to have the exclusive right to operate "Direct-U-Systems" in the City of San Francisco and adjoining territory.

11. That on or about April 11, 1939, at San Francisco, California, defendant Albert A. Mar-

tinez did sign a document described as an "agreement" wherein Ralph A. Burke was to have the exclusive right to operate "Direct-U-Systems" in the City of San Francisco, California.

12. That on or about February 9, 1939, at Oakland, California, [30] defendant Norman H. Marshall did sign a document described as an "agreement" wherein L. C. Whitby was to have the exclusive right to operate "Direct-U-Systems" in Alameda, Santa Clara, Sacramento and San Joaquin Counties in California.

13. That on or about January 3, 1941, at Los Angeles, California, defendants Charles W. Talbott and Helen May Fawkes, in a meeting of the Board of Directors of Direct-U-Systems, did vote to ratify a contract dated November 12, 1940 whereby Ralph H. Bergen was to have the exclusive right to operate "Direct-U-Systems" in all of the State of California north of Santa Maria and Bakersfield.

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

WM. FLEET PALMER,

United States Attorney. [31]

A true bill,

DAVID E. LLEWELLYN,

Foreman.

Bail, Marshall, \$10,000.

Others \$5000. [32]

[Endorsed]: Filed Jul. 30, 1941.

At a stated term, to wit: The February Term, A. D. 1941, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Thursday the 7th day of August in the year of our Lord one thousand nine hundred and forty-One.

Present: The Honorable: Ralph E. Jenney, District Judge.

No. 14,988—Crim.

[Title of Cause.]

PLEAS OF NOT GUILTY

This cause coming on for arraignment and plea of defendants Helen May Fawkes, Llewellyn F. Marsh, Norman H. Marshall, Albert A. Martinez, and Charles W. Talbott; R. K. Lambeau, Assistant U. S. Attorney, appearing as counsel for the Government; Geo. E. Stoddard, Esq., appearing as counsel for Defendants Marshall, Fawkes, and Talbott, who are present; Defendants Marsh and Martinez being absent; and C. W. Lunsford, Court Reporter, being present and reporting the testimony and the proceedings:

Defendants Fawkes, Marshall, and Talbott state their true names are as set forth in the indictment, waive reading thereof, and enter separate pleas of not guilty to each count.

Attorney Stoddard states that Defendant Martinez is in the east and will surrender soon.

It is ordered that the cause be, and it hereby is, continued to August 11, 1941, at 2 P.M. for arraignment and plea of Defendant Marsh, and to September 8, 1941, for setting for trial as to Defendants Fawkes, Marshall, and Talbott before Judge McCormick. [33]

At a stated term, to wit: The September Term, A. D. 1942, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Wednesday the 30th day of September in the year of our Lord one thousand nine hundred and forty-Two.

Present: The Honorable: Ben Harrison, District Judge.

No. 14,988-BH Crim.

[Title of Cause.]

This cause coming on for further trial of defendant Llewellyn F. Marsh on each of counts 4, 5, and 8 to 11 inclusive, and of defendants Norman H. Marshall, Albert A. Martinez, and Charles W. Talbott on each of counts 1 to 5, inclusive, and 8 to 11 inclusive; Charles H. Veale, Assistant U. S. Attorney, appearing as counsel for the Government; Claude A. Shutt, Esq., appearing as counsel for Defendant Marsh; Geo. E. Stoddard, and Ames Peterson, Esq., (associate counsel) appearing as counsel for Defendants Marshall, Martinez, and Talbott; all of the said defendants being present

on bond; Samuel Goldstein, Court Reporter, being present and reporting the proceedings; and the jury and the alternate juror being present and counsel for both sides so stipulating, it is ordered that the trial proceed. * * *

The court instructs the jury on the law of this case, and at the conclusion of the Court's instructions,

There are no exceptions by the defendants or the Government to the Court's instructions given to the jury. The Court at this time excuses the alternate juror, Guy C. Earl, Jr., heretofore impaneled and present during the trial of this case; and pursuant to the Court's order two bailiffs, E. L. Saunders and Chas. F. Ward are sworn as officers to care for this jury; and blank forms of verdicts as to each defendant, the indictment, and all exhibits in evidence are given to the jury, except Defts' Ex. 3F (large electrical directory), which was [34] withdrawn from evidence on stipulation of the parties and order of the Court; and at the hour of 2:15 P.M.

The jury retire to the jury room in charge of said officers so sworn, to deliberate upon its verdicts, and the Court recesses.

* * * * *

At 10:03 P.M. the jury again return into court, the jury being present, and the four defendants on trial being present, and all others being present as before, and counsel stipulating that the jury and the defendants are present;

The Court inquires of the jury if they have

reached verdicts, and the jury through their foreman states that it has reached verdicts as to the defendants, and the Court orders that said verdicts be presented to the Court; and the verdicts are presented to the Court, and pursuant to the Court's order are read by the clerk. The Court inquires of counsel if they desire the jury polled and counsel state that they do not. Whereupon, the Court orders that the four verdicts be read, filed, and spread upon the minutes, the said four verdicts as filed being as follows: * * * [35]

[Title of District Court and Cause.]

VERDICT AS TO DEFENDANT
NORMAN H. MARSHALL

We, the Jury in the above-entitled cause, find the defendant, Norman H. Marshall, Guilty as charged in count 1 of the Indictment; Guilty as charged in count 2 of the Indictment; Guilty as charged in count 3 of the Indictment; Guilty as charged in count 4 of the Indictment; Guilty as charged in count 5 of the Indictment; Guilty as charged in count 8 of the Indictment; Guilty as charged in count 9 of the Indictment; Guilty as charged in count 10 of the Indictment; Guilty as charged in count 11 of the Indictment.

Dated: Los Angeles, California, September 30, 1942.

WALTER M. GUIDEL
Foreman.

[Endorsed]: Filed Sept. 30, 1942. [36]

At a stated term, to wit: The September Term, A. D. 1942, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 26th day of October in the year of our Lord one thousand nine hundred and forty-Two.

Present: The Honorable: Ben Harrison, District Judge.

No. 14,988-BH-Crim.

[Title of Cause.]

ORDER DENYING PROBATION

This cause coming on for (1) further hearing on reports of Probation Officer as to defendants Marshall and Martinez; (2) and for sentence of both defendants on each of counts 1, 2, 3, 4, 5, 8, 9, 10 and 11; Charles H. Veale, Assistant U. S. Attorney, appearing on behalf of the Government; Geo. E. Stoddard, Esq., and Ames Peterson, Esq., appearing as counsel for defendants Marshall and Albert A. Martinez; John Q. Bybee, Court Reporter, being present and reporting the proceedings; and both defendants Marshall and Martinez present on bond; Attorney Peterson makes a statement; Attorney Veale makes a statement; the Court makes a statement and orders application of defendant Marshall for probation denied, and sentences defendant Marshall as follows: * * * [37]

District Court of the United States, Southern
District of Calif., Central Division

No. 14988-BH Criminal¹ Indictment in 11 counts
for violation of U. S. C., Title 18, Secs. 338
and 88;

UNITED STATES

v.

NORMAN H. MARSHALL

JUDGMENT AND COMMITMENT

On this 2th day of October, 1942, came the United States Attorney, and the defendant Norman H. Marshall appearing in proper person, and by his attorneys, Geo. E. Stoddard and Ames Peterson, Esqs.² and,

The defendant having been convicted on³ Verdict of Guilty of the offenses charged in the¹ Indictment in the above-entitled cause, to wit⁴ counts 1, 2, 3, 4, 5, 8, 9 and 10; use of United States mails in furtherance of a scheme to defraud; and count 11; conspiracy to violate 18 USC 338.

and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against,.....and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby

committed to the custody of the Attorney General for imprisonment in an institution of the⁵ Penitentiary type to be designated by the Attorney General or his authorized representative for the period of⁶ three (3) years on each of counts 1 and 2; and two (2) years on count 11, sentences on each of said counts 1, 2, and 11, to begin and run concurrently and not consecutively, making a total term of three (3) years; and It Is Further Ordered that the imposition of sentence on each of counts 3, 4, 5, 8, 9, and 10, is suspended for the period of five years, to commence at the expiration of the sentences on counts 1, 2 and 11, and the defendant is to be placed on probation under the supervision of the probation officer of this court for said period of five years on each of said counts 3, 4, 5, 8, 9, and 10, concurrently, upon the following conditions: that defendant shall not during said period of probation, violate any laws of the United States, State, County or City in which he resides; that he shall report to the probation officer at such times as may be designated and be guided by the usual rules and regulations of the probation officer; and that during that period the defendant shall not engage in any promotional activities whatsoever.

It Is Further Ordered that⁸ defendant is remanded to the custody of the U. S. Marshal, and the bond of defendant is exonerated.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified

officer and that the same shall serve as the commitment herein.⁹

(Signed) BEN HARRISON

United States District Judge.

A True Copy Certified this 26th day of October,
A. D., 1942.

(Signed): EDMUND L. SMITH,

Clerk.

(By) MURRAY E. WIRE,

Deputy Clerk.

¹Indictment or information. ²Insert (a) "by counsel" or (b) "having been advised of his constitutional right to counsel and having been asked whether he desired counsel assigned by the Court, replied that he did not," whichever is applicable.

³Insert the words "his plea of guilty," "plea of nolo contendere," or "verdict of guilty," as the case may be. ⁴Name specific offense or offenses and specify counts upon which convicted. ⁵Insert type of institution such as "jail," "training school," "reformatory," "penitentiary," or "special." If prisoner's circumstances require special type institution, Marshal should submit facts and recommendations of Court to Attorney General where regulations do not apply. ⁶Insert sentence and any provision for payment of fine and state whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin; that is, with reference to termination of preceding term, or with respect to any other outstanding or unserved sentence. ⁷Strike out if Court did not so order. ⁸Indicate any order with respect to suspension and probation. ⁹Certified copy to accompany defendant to institution.

[Endorsed]: Filed Oct. 26, 1942. [38]

[Title of District Court and Cause.]

NOTICE OF APPEAL

The name and address of appellant is Norman H. Marshall, 7223 Beverly Boulevard, Los Angeles, California.

The name and address of appellant's attorney is Ames Peterson, 639 South Spring Street, Los Angeles, California.

The offense was a violation of 18 USC 338 and 88.

The date of judgment was October 26, 1942. A brief description of the judgment is 3 years in the Federal Penitentiary and 5 years probation thereafter. Name of prison where now confined if not on bail, Los Angeles County Jail, Los Angeles, California.

I, the above named appellant, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment above mentioned on the grounds set forth below.

NORMAN H. MARSHALL

Appellant

Dated: October 26, 1942.

GROUND'S OF APPEAL

I.

That said verdict and finding of guilt is contrary to the evidence adduced at the trial of said cause.

II.

That the evidence adduced at the trial is insufficient to [39] justify said verdict and finding of guilt.

III.

Errors of the Court in the admission of testimony offered by the United States of America in evidence against this defendant.

IV.

That the trial judge erred in his rules on the questions of law and fact.

AMES PETERSON

Attorney for Appellant.

Received acknowledgment on this 26th day of October, 1942.

LEO V. SILVERSTEIN

United States Attorney

CHARLES H. VEALE

Asst. United States Attorney

[Endorsed]: Filed Oct. 26, 1942. [40]

[Title of District Court and Cause.]

BAIL BOND ON APPEAL

BOND #824-004

Know All Men by These Presents:

That we, Norman H. Marshall, of the County of Los Angeles, State of California, as Principal, and the Northwest Casualty Company, a Washington

Corporation, as surety, are jointly and severally held firmly bound unto the United States of America in the sum of Five Thousand Dollars (\$5000.00), for the payment of which sum we and each of us bind ourselves, our heirs, executors, administrators and assigns.

The condition of the foregoing obligation is as follows:

Whereas, lately, to-wit, on the 26th day of October, 1942, at a term of the District Court of the United States in and for the Southern District of California, Central Division, in an action pending in the said Court in which the United States of America is Plaintiff and Norman H. Marshall was defendant, judgment and sentence was made, given, rendered and entered against the said Norman H. Marshall in the above entitled action, whereas he was convicted as charged in the Indictment. [41]

Whereas, in said judgment and sentence so made, given, rendered and entered against said Norman H. Marshall, he was by said judgment sentenced to imprisonment for three (3) years on counts one (1) and two (2) of the Indictment and to be imprisoned in said institution for a term of two (2) years on count eleven (11) of the Indictment; imprisonment on said last named count to begin and run concurrently with imprisonment imposed on counts one (1) and two (2); and be imprisoned in an institution of the penitentiary type to be designated as aforesaid.

Whereas, the said Norman H. Marshall has filed a notice of Appeal from the said conviction and from the said judgment and sentence, appealing to the United States Circuit Court of Appeals for the Ninth Circuit; and

Whereas, the said Norman H. Marshall has been admitted to bail pending the decision upon said Appeal, in the sum of Five Thousand Dollars (\$5,000.00).

Now, Therefore, the conditions of this obligation are such that if said Norman H. Marshall shall appear in person or by his attorney in the United States Circuit Court of Appeals for the Ninth Circuit on such day or days as may be appointed for the hearing on said cause in said Court and prosecute his Appeal; and if the said Norman H. Marshall shall abide by and obey all orders made by the said United States Circuit Court of Appeals for the Ninth Circuit and if the said Norman H. Marshall shall surrender himself in execution of said judgment and sentence, if the judgment and sentence be affirmed by the United States Circuit Court of Appeals for the Ninth Circuit; and if the said Norman H. Marshall will appear for trial in the District Court of the United States in and for the Southern District of California, Central Division, on such day or days as may be appointed for retrial by said District Court if the said judgment and sentence against him be reversed then this obligation shall be null and void, otherwise to remain in full [42] force and effect.

This Recognizance shall be deemed and construed to contain the "express agreement", summary judgment and execution thereon, mentioned in Rule 34 of the District Court.

NORMAN H. MARSHALL

Principal

7225 Beverly Blv'd.

Address

[Seal]

NORTHWEST CASUALTY
COMPANY,

a Washington Corporation,

By A. W. APPEL

Attorney-in-Fact

LEO V. SILVERSTEIN,

United States Attorney

CHARLES H. VEALE

United States Attorney

I hereby certify that I have examined the within bond and that in my opinion the form thereof is correct and Surety thereon is qualified.

AMES PETERSON

Attorney for Defendant and
Appellant

The foregoing Bond is approved this 26th day of October, 1942.

BEN HARRISON

United States District Judge.

State of California

County of Los Angeles—ss.

On this 26th day of October, A.D., 194. ., before me, Marva Weede a Notary Public in and for the

County and State aforesaid, duly commissioned and sworn, personally appeared A. W. Appel, Attorney-in-Fact, of the Northwest Casualty Company, a Washington corporation, to me personally known to be the individual and officer described in and who executed the within instrument, and he acknowledged the same, and being by me duly sworn, deposes and says that he is the said officer of the Company aforesaid, and the seal affixed to the within instrument is the corporate seal of said Company, and that the said corporate seal and his signature as such officer were duly affixed and subscribed to the said instrument by the authority and direction of the said corporation.

In Witness Whereof, I have hereunto set my hand and affixed my official seal at my office in the City of Los Angeles, County of Los Angeles, the day and year first above written.

[Seal] MARVA WEEDE

Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires February 3, 1946.

[Endorsed]: Filed Oct. 26, 1942. [43]

[Title of District Court and Cause.]

STIPULATION RE BILL OF EXCEPTIONS

It Is Stipulated by and between counsel for the United States, appellee herein, and counsel for the appellant, Norman H. Marshall, that the time for

filing and settling the Bill of Exceptions herein, shall be, and the same is, hereby extended to and including December 28, 1942.

LEO V. SILVERSTEIN,

United States Attorney

CHAS. H. VEALE,

Asst. United States Attorney

Counsel for Appellee

AMES PETERSON,

Counsel for Appellant, Nor-
man H. Marshall

It Is So Ordered.

Dated: December 24, 1942.

BEN HARRISON,

United States District Judge

[Endorsed]: Filed Dec. 24, 1942. [44]

[Title of District Court and Cause.]

STIPULATION IN RE EXHIBITS

It is hereby stipulated by and between respective counsel that all exhibits introduced at the trial of said cause be by the Clerk transmitted and certified to the Circuit Court of Appeals.

Dated: January 20, 1943.

LEO V. SILVERSTEIN,

United States Attorney

CHARLES H. VEALE,

Ass't. U. S. Attorney

AMES PETERSON,

Attorney for Appellant

It Is So Ordered.

BEN HARRISON,
Judge

[Endorsed]: Filed Jan. 20, 1943. [45]

[Title of District Court and Cause.]

PRAECIPE

To the Clerk of the District Court of the United States, in and for the Southern District of California, Central Division.

You will please prepare the following record in the above entitled cause for the Ninth Circuit Court of Appeals:

Clerk's Transcript as follows:

1. Indictment;
2. Minutes showing defendant entering plea of not guilty as to each count of the indictment;
3. Verdict of the jury;
4. Judgment and sentence, order of commitment, and exceptions noted;
5. Notice of appeal;
6. Bill of Exceptions and Assignments of Error;
7. This praecipe.

AMES PETERSON,

Attorney for Defendant

Rec'd copy of within document, January 20, 1943.

CHARLES H. VEALE,

U. S. Asst. Dist. Atty.

[Endorsed]: Filed Jan. 20, 1943. [46]

[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS

Comes now, Norman H. Marshall, the defendant appellant in the above entitled cause and in connection with his appeal makes it known that in the records, proceedings, judgment and sentence appealed from, manifest error has intervened to the prejudice of the said defendant appellant in these things to wit:

I.

That the Court erred in refusing and failing to find the defendant not guilty at the close of the Government's case in chief, in that the evidence was insufficient to support a judgment of conviction, and failed to show the existence of a scheme or plan to use the mails with intent to defraud.

II.

That the Court erred in refusing and failing to find the defendant not guilty at the close of the entire testimony in the case for the reason that the evidence was insufficient to justify a finding of guilt against the defendant, and failed to show the existence of a scheme or plan to use the mails with intent to defraud.

AMES PETERSON,

Attorney for Appellant

Received copy of the within Assignment of Errors this 17th day of December, 1942.

LEO V. SILVERSTEIN,

U. S. Atty.

CHARLES H. VEALE,

Asst. Dist. Atty.

[Endorsed]: Filed Dec. 17, 1942.

[Title of District Court and Cause.]

BILL OF EXCEPTIONS

RALPH YOUNG

called as the first witness on behalf of the Government, testified as follows:

I have known all of the defendants for a period of at least ten years. Part of the defendants were connected with the National Directory System and I purchased stock in the National Directory System from Mr. Marshall. The business of the company was the purchase and lease of an automatic or animated map. These were used in the lobbies of hotels. At the time when I was connected with the company there was a great deal of office activity. There were probably three or four stenographers and electricians and cabinet makers manufacturing the cabinets and the usual type of activity to be found in a business operating on as large a scale as the National Directory Systems. I had about forty shares of stock in the National Directory Sys-

(Testimony of Ralph Young.)

tems, and that represented 70% of the stock. The rest of it was in escrow. Afterwards I myself started the Automatic Map Company which was incorporated in April, 1938, and that was engaged in the manufacture and leasing of automatic maps. Afterwards I observed the operation of the business known as the Direct-U-Systems. I was an employee of the company with the title of Assistant Manager, and operated it until the latter part of October, 1938, when I bought all of the outstanding stock of the Automatic Map Company and operated it until April, 1940, when I sold my stock. When I sold my stock Mr. Marshall acquired about 7½ shares of the Automatic Company. We leased out equipment to individuals.

It was here stipulated that the Direct-U-Systems cabinet was similar to the cabinets of the National Directory System in certain respects.

It was further stipulated that the Directory Systems started operating approximately in August, 1938 and continue functioning until the date of the trial. [1*]

Cross Examination

By Mr. Stoddard:

I myself sold advertising space for the National Directory Systems.

*Page numbering appearing at foot of page of original Bill of Exceptions.

HAROLD E. WEEKS

called as a witness on behalf of the Government testified as follows:

I live in Brooklyn, New York, where I was a consulting engineer and I replied to this advertisement which I have with me, which reads as follows:

“Resident manager, permanent connection, income reasonably \$10,000 yearly. \$3,750 cash required secured and returnable.”

I answered this ad and received the following reply: (Government’s Exhibit 2.)

“Dear Mr. Weeks:

“We wish to acknowledge receipt of your reply to our recent advertisement for a residence manager.

“Our division manager, Mr. George Todd, will be in your vicinity within a few days and we are asking him to advise you of his arrival, and to arrange a conference with you. It is rather difficult to go into detail pertaining to our proposition, except to say that this is not a promotional matter, and we have nothing to sell you. Ours is a highly ethical and legitimate business proposition, dealing only with the larger business organizations, banks, etc.

“We are dependent on selecting a person of good general business experience who is interested in a permanent connection with an assured income which increases yearly. We must virtually guarantee the success of the one we select. [2]

“In the meantime we trust that you will make no other connection until our Mr. Todd has had the

(Testimony of Harold E. Weeks.)

opportunity to see you, as we are confident that a conference will lead to a mutually profitable and pleasant future.

“Very truly yours, Direct-U-Systems, by

“C. W. Talbott, President.”

After receiving this letter a gentleman by the name of Mr. Wallace called on me in New York. He presented his card as Division Manager of Direct-U-Systems. He told me he had come in connection with my reply to the advertisement. He presented the proposition of a lease rental on a certain number of cabinets giving the right to operate either in New York state or in another state. I was to pay a rental of \$3,750 for the privilege of operating the Direct-U-Systems cabinets for a period of three years. He showed me pictures of certain cabinets and certain testimonial letters. These letters were from the West Coast. He said the proposition was perfected and that it was successful and was in operation in a number of cities. He did not give me many specific locations. He said if I accepted the proposition he would train the salesmen and assist in getting the business started and that he had already made agreements with hotels for the installation of these cabinets and I signed a contract to take five of these cabinets and operate them. He told me that I would be fully protected from similar machines. He had a miniature replica of the advertising device with him.

(Here the Government offered the contract in evidence (Government's Exhibit 4) as the con-

(Testimony of Harold E. Weeks.)

tract between the witness and the Direct-U-Systems).

GOVERNMENT'S EXHIBIT No. 4

Note Double Equipment.

AGREEMENT

This Agreement entered into this 27 day of July 1939 by and between Direct-U-Systems with general offices at Los Angeles California, hereinafter referred to as the Lessor and Harold E. Weeks, of New York City hereinafter designated as the Lessee.

Now, Therefore: in consideration of the premises and the mutual promises of the parties and the consideration passing and to pass from each other to other it is agreed as follows:

The Lessor hereby grants to the Lessee the exclusive right to use and operate the Lessor's Direct-U-Systems in the following described territory for a period of 3 years on the following terms and conditions, with the option for renewal for an additional period of 5 years on the same terms and conditions, providing 5 installations have been made during the first year, & option for renewal for additional 5 year periods under same conditions: Eastern New York State East of the 76 Meridian West of Greenwich.

(1) The lease rental on the 60 space Direct-U-Systems shall be \$750.00 each, and on the 40 space systems the lease rental shall be \$500.00 each for the first year payable upon installation and collection.

(Testimony of Harold E. Weeks.)

(2) The second and succeeding years each 60 space system shall be \$250.00 per year, and \$166.67 for 40 space Direct-U-Systems, payable upon installation and collection.

(3) \$3750.00 upon signing of this agreement. Said payment of \$3750.00 representing payment of the lease rental of the first five systems, hereby leased by Lessee from Lessor to be delivered upon demand.

(4) Lessee agrees to pay Lessor 20% royalty in addition to the lease rental above set forth, payable upon installation and collection.

(5) In addition to the above lease rentals and royalties the Lessee shall pay to the Lessor the sum of 50 cents (50c) for each advertising card furnished for the Lessee's subscribers each month. The Lessee agrees to furnish not later than the 10th of each month, individual copy for the advertising cards to be used the following month, otherwise the Lessor shall be relieved from the responsibility of furnishing same.

(6) Lessor agrees to furnish and install each system complete and maintain same at its own expense during the life of the agreement.

(7) Lessee shall have the use of the leases of hotels and depots and shall pay lease rental direct to location Lessor in the above designated territory, and it is agreed that all leases shall be made in the name of the Lessor and must be approved by the Lessor.

(8) Lessor shall cooperate and assist the Lessee

(Testimony of Harold E. Weeks.)

in securing location leases, hiring and training salesmen, and render all additional assistance practicable, and shall loan sales equipment to Lessee as per list attached.

(9) Lessee shall operate the business in his territory as an independent contractor and shall in no way obligate the said Lessor. This is not an agency nor partnership.

(10) All advertising space shall not be sold for less than \$5.00 per month unless agreed to in writing.

(11) This agreement supersedes and voids all previous agreements between the parties and before executing this agreement Lessee has read each provision herein and understands same, and no other agreement or representation shall be valid or binding on the Lessor.

In Witness Whereof the parties have affixed their signatures the day and year in this instrument first above written.

Payment of \$3750.00 to be made upon sale of bonds being completed.

DIRECT-U-SYSTEMS

By C. S. WALLACE

Lessor

By HAROLD E. WEEKS

Lessee

20 Willow Street, Brooklyn, N. Y.

(Testimony of Harold E. Weeks.)

Witness:

W. K. HALE

63 Columbia Heights,
Brooklyn, N. Y.

Schedule on following page

ANTICIPATED INCOME AND EXPENSES LESSEE PRO-
POSES TO EFFECT FIRST YEAR—STANDARD 60
SPACE INSTALLATION.

Income—60 spaces at \$5.00 per month, or per year.. \$3,600.00

Expenditures by Franchise operator

Lease rental to Lessor.....	\$ 750.00	
20% Royalty to Lessor.....	720.00	
Location lease	100.00	
Sales expense (should not exceed 20%)	720.00	
Sales Manager (if desired) 5%.....	180.00	
60 Advertising cards 8x10 each month, or 720 per year at 50¢ each.....	360.00	2,830.00

Net Profit to Lessee for each 60 space in-
stallation 770.00

Lessee acting as his own Sales Manager
earning increase 180.00

Net profits where Sales Manager is elim-
inated 950.00

Second and Following Years

Income as Above..... 3,600.00

Expenditures—

Lease rental to Lessor.....	\$ 250.00	
20% royalty to Lessor.....	720.00	
Location lease	100.00	
Sales expense (should not exceed 20% account renewals)	720.00	
720 advertising cards at 50¢.....	360.00	2,150.00

Net Profit each installation 2nd and fol-
lowing years 1,450.00

(Testimony of Harold E. Weeks.)

Standard 40 Space Installation		
Income—40 spaces at \$5.00 per month, or per year		\$2,400.00
Expenditures by Franchise operator—		
Lease rental to Lessor.....\$	500.00	
20% royalty to Lessor.....	480.00	
Location lease	100.00	
Sales expense not exceeding 20%.....	480.00	
Sales Manager (if desired) 5%.....	120.00	
40 advertising cards per month or 480 per year at 50¢.....	240.00	1,920.00
		<hr/>
Net Profit to Lessee each 40 space installa- tion		480.00
Lessee acting as his own sales manager.....		120.00
		<hr/>
Net Profits where Sales Manager is elimi- nated		600.00
		<hr/>

Second and Following Years		
Income as above.....		\$2,400.00
Expenditures		
Lease rental to Lessor.....\$	166.67	
20% royalty to Lessor.....	480.00	
Location lease	100.00	
480 advertising cards at 50¢.....	240.00	
Sales expense should not exceed 15%	360.00	1,346.67
		<hr/>
Net Profit to Lessee each 40 space installa- tion 2nd and following years.....		1,053.33

24 Space Installation		
Income—24 spaces at \$2.50 per month or per year		\$ 720.00
Expenditures by Franchise operator—		
Lease rental to Lessor.....\$	157.00	
20% royalty to Lessor.....	144.00	
Location lease	25.00	
Salesman 20%	144.00	470.00
		<hr/>
Net Profit to Lessee each 24 space installa- tion		\$ 250.00

(Testimony of Harold E. Weeks.)

EQUIPMENT

Direct-U-Systems will furnish to Franchise Operator the following equipment:

Double equipment in all items.—C. S. W.

1. 3 Demonstration Cabinets
2. 3 Illustrated Presentation Books
3. 6 Selling Suggestion Circulars
Furnished Free: Up To—
4. 200 sets Advertisers' Service Agreements (quadruplicate)
5. 20 sets Hotel Lease Forms (triplicate)
6. Hotel Room Reminder Cards (as needed)
7. 200 Advertisers' Map Location Cards
8. 200 Letterheads — Imprinted with name of Franchise Operator
9. 200 Envelopes—Imprinted with name of Franchise Operator
10. 200 Letters multigraphed on above, filled in with names and addresses of Franchise Operator's prospects, from list furnished by him, with 2c stamps attached. Shipped to Franchise Operator to place in mail.

Extra Equipment—If ordered additional to above; shipped COD:

Letters as per Item 10, Letterheads and envelopes printed, letters multigraphed, names and addresses filled in, no postage, per hundred. \$5.50

(Testimony of Harold E. Weeks.)

Demonstration Cabinets, each,	7.00
Letterheads and envelopes per items 9 and 10, per 100 sets	2.50
Presentation Books, including Selling Suggestion Circulars, each	1.00

[Endorsed]: Filed 9/21/42.

Having executed this agreement I paid Mr. Wallace \$3750.00. (This check is Government's Exhibit 5).

GOVERNMENT'S EXHIBIT No. 5

(1)

Brooklyn, N. Y. City August 1, 1939 No. 2072
 Brooklyn Trust Company 2-1-102
 177 Montague Street

Pay to the Order of Direct-U-Systems \$3,750.00/100
 Three thousand seven hundred fifty andno/100 Dollars
 Harold Eastman Weeks.

[Stamped]: 16-20 51 1.

[Written in red ink across face]: B 45744

[Stamped across face with illegible bank stamps.]

[Endorsed on reserve side]: Direct-U-Systems, and stamped
 with illegible bank stamps.

[Endorsed]: Filed 9/21/42.

I received a letter of acknowledgment from the company, Government's Exhibit 6. Mr. Wallace remained in New York about 4 weeks [3] after I signed the contract. He selected salesmen for me and I approved them and in some discussions with

(Testimony of Harold E. Weeks.)

the salesmen it was recommended that we endeavor as soon as possible to put a cabinet in the Waldorf Astoria. Mr. Wallace advised me not to do it. He said, "You better not do it." (Tr. pp. 63 and 64.) He delivered hotel leases to me from the Hotel Breslin, the Imperial, the Thirties, the Hotel Times and the Park Central. I was told that this field that I had was a new field, that it hadn't been exploited. (Tr. p. 54, lines 10, 11, 12.) I wrote the following letter under date of July 31 to the Direct-U-Systems in Los Angeles: [Printer's note: Excerpt from Government's Exhibit No. 7.]

"Dear Mr. Talbott:

"Your letter of July 29 reached me this afternoon. I assure you that I consider it an honor to be associated with and serving with gentlemen of your standing, ability and experience, in a business so clean-cut, honest and helpful, which is at the same time so profitable.

"Mr. Wallace has been very cooperative and will be indispensable in training the salesmen and helping me get started in the methods which you have proven to be most successful.

"I am glad that you agree with my suggestion relative to the map. In this connection I would like to point out that the Sixth Avenue Elevated has been demolished in Manhattan and should no longer be shown on any map. It may appear on the Hagstrom Map I forwarded through Mr. Wallace.

"The sample stationery you submitted is satis-

(Testimony of Harold E. Weeks.)

factory as to paper, letterhead, and other printing. I am already working on the list of prospects. Mr. Wallace suggested that I prepare two lists of 200 each, one to be sent as soon as possible and the other at a later date. I have the contract money in the bank and am [4] obtaining a cashier's check for Mr. Wallace to forward tomorrow morning.

"I am arranging to have a Secretary-Stenographer who will look after my letters and typing, improving upon this particular letter.

"With my best personal regards and my assurances of diligent endeavor,

"Harold E. Weeks."

I wrote the following letter on August 4th:

[Printer's note: Excerpt from Government's Exhibit No. 8.]

"C. W. Talbott, President

"Direct-U-Systems

"501 North Laurel Avenue

"Los Angeles, California

"Dear Mr. Talbott:

"Yesterday afternoon I received some information concerning the Automatic Map Company, and one L. F. Marsh, who apparently represented that company and made arrangements with two different concerns, or individuals, to distribute, install and obtain advertisements in connection with the cabinets which apparently are very similar to ours, except possibly for the individual 8 inch by 10 inch cards.

(Testimony of Harold E. Weeks.)

“Apparently Marsh played one individual or group against the other, and failed to live up to certain business agreements to such an extent that he was called down to the District Attorney’s Office.

“I am going to quietly and thoroughly investigate this matter to ascertain how it will effect our business, also to endeavor to learn from the parties that were mistreated the extent to which hotels and advertisers were approached. [5]

“I discussed this matter with Mr. Wallace yesterday afternoon and he told me that he was going to telegraph you about it.

“I would appreciate it if you would inform me of any facts you may have in connection with the Automatic Map Company and its methods of doing business, its products, etc. Please, also advise me whether there are any patent complications which might arise in this connection. It will be very easy for me to look into the patent situation through connections I have in Washington, D. C., but I shall do nothing along these lines without your full knowledge and consent.

“I have invited an advertising man, who knows the situation in connection with Marsh and his agents, to lunch with me today, provided he can get away from his work in time. If we cannot confer today I will arrange to have him see me early next week.

(Testimony of Harold E. Weeks.)

“I will keep you posted concerning any developments in connection with this matter.

“Sincerely yours,

“HAROLD E. WEEKS.”

I received the following letter in reply:

[Printer's Note: Excerpt from Government's Exhibit No. 9.]

“Mr. Harold E. Weeks

“11 West 42nd Street

“New York City, N. Y.

“Dear Mr. Weeks:

“We are in receipt of your several letters of the 4th, for which we thank you, and we are not surprised from the information that you have written relative to the Automatic Map. [6]

“There is nothing to worry about from them as their equipment includes only the Directory and Map service even if they do attempt to work in that field, and we have little anticipation that they will be of any concern to you for we have never, and we feel sure that you will agree with us, seen any organization or project built upon the structure and the method of conducting their business upon the lines that they apparently do from the information that you have furnished, turn out to be successful.

“The head of this organization is a former employee of the writer and we knew that they were attempting to operate but we were also familiar

(Testimony of Harold E. Weeks.)

that they had had so much litigation due to apparent misrepresentation it was reported that they ceased operations.

"We have many features that are exclusive and protected which insures our service the outstanding position that it has been placed and the policy that we have pursued has built us an enviable position in our field.

"According to the Hotel Red Book and from all information that we have, we are the only organization manufacturing and leasing electrical advertising equipment that have been extended and have accepted a membership in the American Hotel Association.

"Our advertising cards which change approximately every ten seconds, furnish the advertiser the service that they really desire. For with the plain listing, they do not have the opportunity of [7] changing their copy which is so vital and desirable to them.

"You will find that this service alone will appeal to the advertiser and they would be willing to pay many times the charge that we have suggested for this service, by the mere fact that it permits them to currently advertise their seasonable merchandise, sales, etc., in an exclusive location that they could not hope to secure in any other manner.

"We are making an investigation on this and of course we feel it advisable to carry this along very quietly and we wish to assure you that there is no need for any anticipation on your part of any con-

(Testimony of Harold E. Weeks.)

fiction, for with the information that you have, and we will advise you of our other findings, it will be very easy to discredit them if that is necessary. We are confident that they will not cause you any handicap there, for it appears that they are sure to run into some difficulties if they continue their apparent tactics.

“If the proposition did not offer such unusual opportunities, of course no one would attempt to duplicate it, and if they would carry on their business in a dignified and high type manner as we do, the competition might be beneficial as competition is the very life of business.

“We would suggest that you proceed along our original lines and ignore the Automatic setup as we are not interested in any way in their [8] operations, but keep us advised of any situation that might arise in which they might interfere with you, and we certainly shall endeavor to find a quick and effective manner in which to put a stop to it.

“We have your equipment, including your printing, all finished, and the only thing that is holding it up is receiving your list, so that we may prepare the advance letters and forward the equipment altogether.

“We also include the 8½x11 paper, and we are at a loss to understand your meaning of ‘500 sheets of the same bond paper without letterheads’, but we assume that you desire in addition to the letterheads that we furnish you, some blank paper.

“We feel confident from the reports of Mr. Wal-

(Testimony of Harold E. Weeks.)

lace, that you will develop the outstanding territory in the country for us, and we desire to cooperate with you in every way possible, and assure you that there is no need for you to be disturbed by any reports or activities of any competitive project, for we have ways and means of putting a stop to it, but we feel that it is better to do it without any publicity or causing any friction among the hotel or advertisers.

“With the kindest personal regards and thanking you for your courtesy to our Mr. Wallace who will lend you every assistance possible in getting you established, we are,

“Very truly yours,

“DIRECT-U-SYSTEMS,

“By C. W. TALBOTT.” [9]

I learned about the Automatic Map Company about a week or ten days after I had paid the money to Wallace. (Tr. p. 73.) I relied upon the representations made to me. (p. 75). I ordered a cabinet to be exhibited at the National Hotel Exposition and it was later put in the Park Central. It arrived C O D. However, they reimbursed me. It was on exhibition about five days but did not operate in a satisfactory manner. (p. 77). When you pressed the button a red light was supposed to go on and it did not function properly. The card operating machine was out of order a good part of the time. (p. 78). Part of the time the machine would work and part of the time it would not be-

(Testimony of Harold E. Weeks.)

cause sometimes the card machine jammed and the entire mechanism would stop. (p. 81). I had to arrange to cut down the sides of the cards. I received this letter dated November 6, 1939.

(Government's Exhibit 11.)

"Dear Mr. Weeks:

"The card-changing machine is the only thing that could possibly cause any confusion and we have had this machine under continuous test and running for 72 hours and it is adjusted so that it never misses.

"We used three-ply 180.m. Bristol stock in the cards, and they should be a little under an 8 x 10 size.

"We recommend that a quarter of an inch be cut off of the top and the bottom of the cards, making the exact size $7\frac{1}{2}$ x 10.

"Where the card is a full 8 inch it fits into the rollers and feeds too fast and that is why we suggest cutting down on the size of the card a little.

"The fact that it handles 60 cards in such a [10] limited space shows that it must be a very delicately adjusted machine, but the only thing that can throw it out of balance is either the wrong weight of card or too many cards in the machine increasing the thickness and crowding the card space, and this can be remedied by the adjusting of a spring tension on the face of the glass."

Afterwards I moved the machine I had at the Park Central Hotel to my own office for the pur-

(Testimony of Harold E. Weeks.)

pose of adjusting it. The machine was equipped for sixty advertising spaces and I had sold eleven when I moved the machine from the hotel to my office. (p. 86). I made some repairs to electrical wiring. I had to put in new batteries every day. The machine was placed in the Hotel, about the 5th or 6th of December. (Tr. p. 86.) For a time it operated fairly well then we began having interruptions. The machine wouldn't shift the card or else it would stop entirely. (Tr. p. 87.) I wrote the following letter to the company concerning my difficulties, "Government's Exhibit 12 (Tr. pp. 89 to 96.)" On the same day I wrote the company another letter as follows: (Tr. pp. 97 to 99).

[Printer's Note: Excerpt from Government's Exhibit No. 13.]

"Gentlemen:

"On December 5th I paid Mr. H. A. Lanzner, the general manager of the Park Central, \$100.00 in accordance with the terms of the contract between the Direct-U-Systems, signed by Mr. Wallace, and the hotel, signed by Mr. Lanzner. The enclosed photostat, evidencing my payment, is for your files.

"On December 6th, (the changeable exhibitor apparently functioning properly) the cabinet was delivered by the American Railway Express Company to the hotel and I had it installed in [11] the spot agreed upon between Mr. Wallace and Mr. Lanzner on the contract form.

(Testimony of Harold E. Weeks.)

“The changeable exhibitor and cards, I personally carried to the hotel, going in a taxicab.

“That night the cards jammed after running for about four hours and the chief bell hop shut off the motor.

“On December 7th, there were two more interruptions damaging cards. In one of these the aluminum roller fell down and the top metal plate on the glass frame was disconnected where soldered on the right hand side.

“The second interruption was caused by two cards running through at once, jamming the machine and tearing two cards.

“Yesterday, December 8th, there were three interruptions necessitating the removal of cards. I saw one of them myself and immediately shut off the motor. The front card had not completely descended and had started moving upward just before I stopped the machine.

“On each occasion the machine ran from two to five hours and then the trouble occurs. Personally, I am inclined to believe that electrostatic charges are being built up which finally accumulate to such an extent that two cards attempt to run through at once and the machine jams. I know of several means to combat this and I would also like your recommendations concerning the same.

“My franchise contract with you calls for you to completely attend to the delivery, installation and maintenance of the cabinets. [12]

(Testimony of Harold E. Weeks.)

“At present, we have 13 bona fide advertisers on this cabinet and most of these have not even made any initial payment. You know the payment arrangements from the copies of the contracts I have mailed to you.

“The sales possibilities have apparently been grossly over-estimated by Mr. Wallace and others. After over 3,000 calls during the past three and a half months, only 23 orders, 13 for the Park Central and 10 for the Imperial.

“We have interviewed about 140 men who considered working for us, many men of wide experience. We have employed about thirty of the most likely of these. They have worked hard. I have advanced much money to keep some of the best alive and they have finally had to give up and leave my employ because they could not make a go of it.

“The attached sheet shows what happened to the men selected by Mr. Wallace.

“Unless you fix up a dependable movable exhibitor at once I am licked as far as any Direct-U-Systems business is concerned.

“Please advise your wishes concerning the maintenance of the Park Central cabinet.

“Very truly yours,

“HAROLD E. WEEKS.”

I wrote another letter about the same time (p. 96) complaining about the mechanical defects of the machine. I received the following letter in reply:

(Testimony of Harold E. Weeks.)

[Printer's Note: Excerpt from Government's Exhibit No. 15.]

"Dear Mr. Weeks:

"Your favor of the 9th as well as the other letter bearing the same date has been forwarded [13] to the writer here and he wrote you under the date of the 11th inst. answering your first letter.

"Frankly the writer is at loss to understand why you failed to include in your first letter the information that the system had already been installed in the Park Central particularly in view of your letter, bearing the same date, gave many good suggestions as to improve that particular rotator.

"We are indeed sorry that you have made the installation in the hotel when you felt that the equipment would give trouble and requested that we make the changes you suggested and ship you another machine as quickly as we could.

"This we have ordered taken care of as you requested and we will rush it to you as quickly as is possible but we explained the cause or reason of the change of card size, etc. in our letter of the 11th.

"The cause of the jamming of cards is due to an accumulation of electrostatic as you have correctly analyzed and we had it adjusted out and successfully tested before shipping but there are quite a few circumstances might cause it to reoccur.

"We have overcome this in the past through adjustment but as you state you are familiar with

(Testimony of Harold E. Weeks.)

several corrections for this and we would appreciate your having this corrected there and we will take care of the cost, if it is not too expensive, while we are preparing another rotator in accordance to your suggestions and testing it.

"We are willing to do this and feel that it is advisable inasmuch as the cabinet is already set [14] in and we want to cooperate with you in every way and this will be the best and not cause any bad features or reaction to the prospects or clients.

"You may rest assured that we will abide by our agreement and take care of the maintenance for we know that only through the successful operation of the equipment can we all prosper in your territory.

"We are at loss why you are having so much trouble with your sales and there is apparently something radically wrong in the presentation of this service.

"As the writer advised you he is one of the pioneers in electrical director and has supervised the installation of a great many directories and has seen successful installations in cities only a fraction of the size of New York where there not even 3,000 prospects.

"You state that your salesmen have made 3,000 calls and the net result only 23 sales. This seems impossible as the law of averages would show a greater percentage than that in any sales work

(Testimony of Harold E. Weeks.)

where the produce of service is presented in any kind of an intelligent manner.

“The writer shipped an installation to a city of 30,000 people that every space was sold and by inexperienced and we felt unqualified salesmen so you can readily appreciate and feel it’s almost incredible that the results are so different there.

“We would appreciate your having a photograph made of the Park Central installation from two views at our expense and send them to us and we will prepare some sales data and facts and [15] figures that should sell that space by mail.

“The writer is going to arrange to have our Mr. Marshall, if possible, to go from our Los Angeles office to New York to assist you in getting your difficulty worked out for the service is outstanding that the merchant cannot help but appreciate its value.

“Space on directories have been sold for as much as \$150 per space per year and even higher in much smaller places etc. so we know that the service is salable but apparently there is something something wrong in the presentation somewhere and we want to assist you in finding out just what the trouble is.

“We would suggest that until the trouble has been taken care either by your arranging for the correction or until we can get a new machine to you that you do not run the machine but put in a nice card stationery something to the effect “Park Central endeavors to make your stay pleasant, etc.”

(Testimony of Harold E. Weeks.)

rather than carrying any individual advertiser's car.

"We will rush the new equipment to you but in the meanwhile if you can correct the difficulty it will be well and to our mutual advantage.

"Please rest assured that we are more than anxious to cooperate and we know that you will succeed there and will put in many beautiful and profitable installations.

"With the kindest personal regards, we are,

"Very truly yours,

"DIRECT-U-SYSTEMS,

"By C. W. TALBOTT." [16] ..

and also another letter from the Direct-U-Systems dated December 11, 1939:

[Printer's Note: Excerpt from Government's Exhibit No. 14.]

"Dear Mr. Weeks:

"Your letter of the 9th was forwarded to writer here where he is supervising some additional work and you can be assured that we regret that the equipment that was sent you has not proven up to your expectations.

"Unfortunately, when we attempted to rush the cabinet maker, which is always bad, an error was made by them in the size of the opening, and as we were so limited in time that we were not able to have this corrected by them as they claimed it would necessitate their completely rebuilding the entire cabinet.

(Testimony of Harold E. Weeks.)

“Time did not allow for this and the next best thing that we could do was to change the revolving equipment and reduce it in size as this appeared to be the best operation to eliminate disappointing you on the equipment as this could be taken care of while the cabinet was being wired.

“We had this revolving under test for 72 hours before shipping and it did function perfectly with the possible exception of occasionally another or second card was carried through and this caused by a static condition that is extremely difficult to overcome but we did adjust it to a point that it was very seldom.

“On my return to Los Angeles the writer will discuss the matter of additional lights filtering through and it is quite possible that we may be able to construct a new master board and back [17] board and new maps and opaque the reflection and ship it to you and it can be readily set in, the only hard part would be adjusting the map to fit.

“In reference to the cards we have found that the plastic cards make a much better and more attractive stock than paper, and needless to say they are several times more expensive but we feel that the reflection will not be objectionable and they were made to slightly to bow and we have never had an occasion where they proved objectionable but quite to the contrary.

“The writer will take care of the construction of a new rotator, personally, and be guided by

(Testimony of Harold E. Weeks.)

your suggestions and eliminate the features that you have found objectionable as we can assure you that we desire to have this equipment function perfectly as we feel that your territory offers unusual possibilities, in fact, the greatest in United States, and from the recommendations of Mr. Wallace we feel that you have the ability to develop it to a point that will prove very much to our mutual benefit and profit.

“The writer has been actively interested in the electric directory business for many years and has supervised the installations of many quite satisfactory installations and we have found that it is beside the point as it does not directly benefit the local operator as to what results may have been derived in other territories irrespective as to the number of installations. [18]

“His problems are strictly of a local nature as the merchant is not interested in the results from any other city but from what results he can see it will mean to him as his problem is also local and you can show the merchant more spending circulation than he can get in any other medium irrespective as to its cost.

“We place our franchises solely upon possibilities as are offered in the territory that is offered and not upon the strength that there has been so many installations made and our representatives are so instructed and we insist that they adhere to that rule, this is one reason that we embody into

(Testimony of Harold E. Weeks.)

our understanding all of the provisions and request the new operator in our letter of acknowledgement if he understands all of the provisions, etc.

"You may rest assured that we will cooperate with you in every way and correct any difficulty that may exist as it is only through your success that we may all prosper and you have demonstrated that the service can be sold and we know that with an installation in the Park Central that the next several installations will be comparatively easy.

"The writer is returning to Los Angeles in a few days and will work out a solution that we are sure will meet with your approval as we are dependent upon your personal success for our success in New York and feel at liberty to make any suggestions or advice that you feel will be constructive and [19] to our mutual benefit.

"With the kindest personal regards, we are,

"Very truly yours,

"DIRECT-U-SYSTEMS,

"By C. W. TALBOTT."

Later on I received from the defendants another machine to replace the first one. I would say the latter part of February, 1940, but this did not seem to operate much better. (P.108) I sold ten or eleven advertising spaces in the machine that I had installed at the Imperial Hotel and they shipped a new machine to me which was very much better but I still had trouble with it as the cards jammed in the machine. I finally received five machines,

(Testimony of Harold E. Weeks.)

three of which were not delivered until sixty days, four months, and seven months, respectively, after they were ordered. (Tr. pp. 111, 112.) By reason of the defective mechanisms of these machines, I probably lost about thirty percent of my advertising. I continued to operate these machines actively until March 1, 1941. I did not make any net profit. During the time I was actively operating them, I spent about \$14,000 and took in about \$1,170. (p.114) A Mr. Morgan called on me during this period and said he wanted to meet me personally as he had referred to me in his advertising of these machines as a successful operator. Mr. Marshall never came to see me in New York. (Tr. p. 114) However, I actually quit this business in March of 1941. I do not know what became of the machines that were left in the hotels (p. 118). I have one of the machines at my home at the present time. I sent the following wire to the Direct-U-Systems: (Government's Exhibit No. 16.)

“Waldorf cabinet made by National Directory Systems for that hotel while Talbott president. Five bad interruptions Park Central rotater during April damaging many cards. Impossible sell service this cabinet until replaced by proper rotater. When will efficient one [20] demanded four and a half months ago be sent by express. Wire.

“HAROLD E. WEEKS.”

and I received this letter: (Government's Exhibit No. 17.)

(Testimony of Harold E. Weeks.)

“Dear Mr. Weeks:

“We received your telegram giving us the information that the Waldorf installation was made by the National Directory Systems for that hotel while the writer was president of the old company.

“This is all news to us as the writer has had no interest in the National Directory Systems since the early part of 1938—and to the best of his recollection, there was never any lease on the Waldorf Astoria. Of course, any operation of the National Directory is out of any jurisdiction or suggestion of the writer. However, if you will send us the names of the advertisers on there it is quite possible that we could get some of the creditors for the old National Directory Systems to demand that the payments be made direct to them. This, of course, you can readily appreciate will stop any operations in a hurry of the National Directory.

“In reference to the rotating machine—we are tooling up to get this equipment in manufacture. But as we requested some time ago, if you will give us your reaction as to any changes, etc. we would appreciate it very much. We were advised by Mr. Musorofite that the operation was very good in the Park Central—in fact, it was running satisfactorily. However, he recommended and suggested that we furnish one of the [21] new rotators which we intend to do.

“We asked you sometime ago to send us the copy on some of your cards, and we would be only too happy to cooperate and would have some of

(Testimony of Harold E. Weeks.)

them remade here to take care of the damage there.

“We have not been able to get any reports as to the additional sales of any space on either the Park Central or the Imperial—nor have we been able to get any cooperation from you in furnishing us the data we requested so we could prepare some special selling material for you.

“We are quite at loss to understand your total lack of cooperation and your indifference to this situation, as we are extremely anxious to work out and cooperate with you in every way possible. You can readily appreciate that the only way we can hope to profit by this is through your installations and the royalties which would be forthcoming.

“If you will go through your file for the past few months and furnish us the information we requested, we will be able to furnish you some additional selling helps which we believe will be quite advantageous to you. In the meanwhile we are proceeding with the development of the new rotating machine. We assume from the information that Mr. Musorofite has furnished us and your lack of advising us to the contrary, that the rotating machine is functioning perfectly in the Imperial, and there would be no changes suggested.

[22]

“We would appreciate it, however, if you would have a photograph made of the installation in the Imperial so that we could keep our records complete.

(Testimony of Harold E. Weeks.)

“If there is any other cooperation and assistance we can render you, please do not hesitate to call upon us. We are extremely interested in your success and will cooperate with you in any way that is in line with good business.

“With the kindest personal regards, we are

“Very truly yours,

“DIRECT-U-SYSTEMS,

“C. W. TALBOTT,

President.”

(Government's Exhibit 18, Tr. p. 123.)

GOVERNMENT'S EXHIBIT No. 18

Direct-U-Systems

General Offices

Direct-U Building - 7225 Beverly Blvd.

Los Angeles, California

August 8, 1940

Mr Harold E. Weeks

160 Fifth Ave.

New York City.

Dear Mr Weeks:

We wish to acknowledge receipt of your favors of the 2nd and 5th and wish to assure you that we have no desire to enter into any controversy with you nor do we want to have any hard feeling or any misunderstandings with you as it is so foolish as we are both interested in reaching the

(Testimony of Harold E. Weeks.)

same goal, the installation and successful operations of Direct-U-Systems in your area.

We do want you to know that we are sincerely endeavoring to render you the best service that we know how and build you the best equipment that we humanly can. Our sincere endeavor is to assist and co-operate with you in every way possible and it is possible that during this time when so many things seem to go wrong that all of our nerves become somewhat on edge. Possibly we have both taken things that have been written in a way entirely different than the true since in which they were meant and to offend you is the farthest from our intent and we do hereby entend our apologies.

In every business that you must depend on others to do your contacting many reports are sent in many are no doubt tendered more in a nature of excuses to cover shortcomings and we passed on to you telling you what we had heard and we are quite glad to be assured by you that they were not true as we felt that you were not the type of a person that would knowingly hurt us. As far as we are concerned we consider the matter closed with our regrets that they were even called to your attention.

The Pacific National Advertising Agency is just one of several hundred advertising agencies that handle space for various newspapers for the commissions that the papers pay them and they with

(Testimony of Harold E. Weeks.)

several other firms rent space in the same building that we are located.

As far as Mr. N. H. Marshall is concerned he is not employed by us nor has he been but is well known by us as he was at the time the old National was operating most successfully as the financial records will show it was when he handled the sales and thru his efforts and knowledge and hard work the most successful development was done not only by the company but by the lessees. When he left the old National due to some personal and domestic difficulties their decline started and when it reached a point that the writer did not care to be associated he disposed of his interests and the old investors realized that they had made a mistake and we are sure that if you knew him we are sure that you would agree. He is interested in some educational business but we are sure that if you will write him addressed P. O. Box? Hollywood Cal. that it will be forwarded to him and he will, we feel, be more than glad to assist in rectifying any reports that may be damaging to you or this company.

We are at loss to understand what connections any report on him may have with your selling any of your prospects as he has never had any connections with this company but we will say, frankly, that he can have a position here at any time and we are equally sure that if you knew him

(Testimony of Harold E. Weeks.)

you would give him serious consideration as to the handling of your sales.

Your prospects are doing business with you individually and this company has nothing to do with it nor does anyone else as we can see it and we feel that all you have to do is to establish yourself in their eyes as your are the lessee and operator of Direct-U-Systems in New York City.

As far as we are concerned we want to consider any misunderstandings in the past a closed book and extend ourselves to developing a future that will more than offset any unpleasantness.

We are very happy that you are well pleased with the Governor Clinton installation as we can assure you that we have truly tried to build it as near perfect as possible and we do regret that there was anything to do to the machine and we are confident that it will function perfectly. We do appreciate the fact that you are sincere in your desire to make helpful suggestions to perfect the equipment and if we have ever wrote otherwise please accept our apologies again.

We are sure that you appreciate that some arrangement must be made to shut the motor off a few hours each day and using Direct Current a time switch can not be used.

We are rushing the other systems as fast as we can but as we have explained some of the vital parts are being held up by the war such as push buttons and certain other materials. We have the cabinets completed printing, rotating machines

(Testimony of Harold E. Weeks.)

ready etc as are quite interested in getting them to you as soon as possible.

We would appreciate it greatly if you would have a photo made and if possible to include the hotel manager as we have a program that we feel we assist you materially in your sales if you will co-operate along these lines.

With the kindest personal regards and again assuring you that we hope any unpleasantness in the past will be overlooked as a closed book, we are,

Very truly yours

DIRECT-U-SYSTEMS

T/N

By: C. W. TALBOTT

(Cut)

An International Service

[Stamped] Received Aug 12 1940 Ans'd....

[Endorsed]: Filed Sept. 22, 1942.

Also the letter dated July 25, 1940, as follows:

[Printer's note: Following is from Government's Exhibit No. 19.]

"It has come to us from several sources, that you have been putting out some erroneous reports, mainly that there is some connection between the National Directory and our present organization, and that the National Directory Systems were competing with you.

"We went into long detail and explained the entire situation to you, as well as assuring you

(Testimony of Harold E. Weeks.)

that this company has no interest, nor have any of its officers any interest either directly or indirectly with any other company, and we have no jurisdiction over any of them.

“The latest report we had this week was that you had stated that the National Directory was competing, and that they were connected companies, and we finally checked up with the attorney for the creditors of the National Directory Systems [23] and we find that the installation you claim is in the Waldorf Astoria, is being used without any authority, and the attorney asked us if we would endeavor to get the names of the people who have subscribed to this service, as they would like to take the matter up direct with them and stop all payments to anyone, as that equipment belongs to the creditors, and at this time they are not getting anything out of it.

“The first information that we had that they were even attempting to use it, was the report from you.

“We asked you to furnish us this information quite some time ago, as we were trying to check up on it, but we were not accorded the courtesy of your cooperation in this.

“It appears that this situation in New York is one that neither you or are we happy over it, and we were wondering if you would be interested in disposing of your lease agreement as it is quite possible that we could arrange with someone in that area to take it over on a basis that would

(Testimony of Harold E. Weeks.)

relieve you of some of your investment, and place it in a position where there is some liklihood of our making some money out of it. We feel that an arrangement of this kind would undoubtedly lead to much more happiness, not only on your part, but we can assure you, on the part of this company, as we have endeavored to cooperate and assist you in every way possible, and do not know whether it is purposely or otherwise, but certain adverse [24] reports that you have put out, have practically 'stymied' our operations in the East. We are rather reticent to think that you would deliberately take such steps, as we have endeavored to cooperate with you and furnish you equipment as near to your wishes and desires, although not strictly in accordance with our agreement, and most certainly we do not agree to furnish anything except our standard equipment, and we have made many changes, including the re-designing, to give you a larger size card on the rotating machine."

I disregarded their offer. (p. 132) I received another letter as follows: (Government's Exhibit No. 20.)

"We wrote you sometime ago and asked you if you would entertain a proposition to dispose of your lease agreement, but we were not accorded the courtesy of a reply, so we assume that you are not interested, and desire to continue.

"We do regret that we are not in position to

(Testimony of Harold E. Weeks.)

take care of this Musorofite account, but feel that we can during the month of September.”

Cross Examination

By Mr. Stoddard:

I signed the document which you show me dated August 18, 1939. (Defendants' Exhibit A)

“Verification of assistance given to franchise owner. Franchise owner: Harold E. Weeks.

Operating as: Harold E. Weeks.

Address: 11 West 42nd Street.

City: New York City.

No. 1, Hotels

Name: Imperial [25]

Times Square

Breslin

Location: New York City.

No. 2, Helped Secure Cooperation or Acceptance of Local Chamber of Commerce: Not possible in city this size.

No. 3, Assisted in Securing Six Salesmen (also sales manager,)” and written above that “None desired.” All as selected by franchise owner as a satisfactory starting organization.

No. 4, Assisted at Meetings in Training and Informing said Sales Organization.

No. 5, Helped Franchise Owner Find and Rent Suitable Office Quarters,” and under that, type-written, “Already had office, 11 West 42nd Street.

No. 6, Assisted in Compiling Adequate List of Prospects to be Mailed Special Letters.

(Testimony of Harold E. Weeks.)

No. 7, Left with Mr. Weeks Additional Equipment over and above number allowed in contract.

“Assistance given on (dates): Intermittently from August 1st to August 19th.”

And above that “Assisted engaging and trained sales force every day from August 14th.

“By C. S. Wallace, as Division Manager.

“To: Direct-U-Systems, Los Angeles, California.

“Your representative named above has done, or assisted me to do, each of the items checked. Accordingly I have now received all assistance you agreed to furnish me and all supplies for use in my first campaign and believe that I will be able to carry out my part of our agreement without further assistance.

Signed: HAROLD E. WEEKS.

“Dated August 18, 1939.” [26]

I signed and mailed the letter under date of October 10, 1939 which you show me. (Defendant's Exhibit F).

“Gentlemen:

“This morning I sent you a telegram confirming the possibility of exhibiting a walnut finished cabinet at the National Hotel Exposition at the Grand Central Palace, New York City, from November 13”—skipping one paragraph with reference to the booth.

“The cost of the booth is \$192.50. This price covers the standard booth equipment including very

(Testimony of Harold E. Weeks.)

attractive drapes, sign and floor covering as shown on the attached leaflet.

"It will be necessary for me to furnish the booth with chairs, tables, lamps, etc., and I estimate that my expenses, including the booth rental, for the five day period of the exposition will amount to about \$300."

I was told by the Direct-U-Systems that a rush order on a machine would mean rush construction. (P. 145) I sent the following document: (Defendant's Exhibit G)

"To Direct-U-Systems, 301 North Laurel Avenue, Los Angeles, California.

"Am anxious to demonstrate walnut finished cabinet at National Hotel Exposition, November 13 to 17 stop If I have your map marked for locations of 60 bona fide and prospective advertisers and twelve points of interest also complete information for printing narrow cards in your hands by October 16 can you deliver cabinet at Grand Central Palace Manhattan November 10 stop. Will furnish 8 by 10 cards here stop [27]

This machine is the one that gave me the most trouble. I was not told that the Direct-U-Systems cabinet was the only kind on the market. I was told it was the best. (p.153) I will say they are a beautiful cabinet. There is no question about it. (p.155) However I had trouble all the time from time to time. Occasionally a button would stick and the lights would burn out but this was not serious. The thing that was the most serious was

(Testimony of Harold E. Weeks.)

the animator. That was the mechanical feature that was my chief complaint, but the animators were improved on later installations. (p.157) It was a very difficult field in which to operate because it had already been worked over by two companies. I had contracts cancelled because people could not see their card; they weren't operating. I have letters from people—I have them with me, people who said they went in the Hotel again and again and their cards were not operating, the machine was not operating. The cards, too, became terribly worn and dirty; they had to be replaced often. (Tr. p. 158.) I had myself never had any previous experience in selling of this type. I had complaints about people tampering with the cabinets but that was where we had to open up and put in cards. (p.169) I claim that things were misrepresented to me in the literature and pictures of installations in hotels. The pictures referred to were those pictures of cabinets that were supposed to be installed. I supposed they were still installed at the time the pictures were shown me but they had been removed as unsuccessful. In other words, these machines were determined as being unsuccessful by the operators of the Hotel at the very time they were shown to me as being in these Hotels. A picture of a cabinet in the Multnomah Hotel at Portland, a picture of one at the Plaza Hotel at San Francisco, a letter about a cabinet in the New Washington Hotel at Seattle, were shown me. Those letters of recommendation

(Testimony of Harold E. Weeks.)

were written to a man named Kane and they were dated prior to the date of incorporation of the Direct-U-Systems. I claim that all of that was misleading to me and to the general public. (Tr. p. 173.) [28]

CHARLES S. WALLACE,

called as a witness on behalf of the Government,
testified as follows: (P. 175)

Direct Examination

By Mr. Neukom:

I was engaged as a salesman by Mr. Marshall in the year 1939 by the Direct-U-Systems. This was in the old Pioneer Building in Los Angeles which Mr. Marshall owned. I sold cabinets to the witness who preceded me, Mr. Weeks, but I never made any representations not contained in the company's literature or in my kit. (p. 176). This letter which you showed me dated July 22, 1938 which is addressed to Mr. Kane was in the kit which Mr. Marshall gave me. He told me that the National Directory Company was out of business and that they had made a lot of improvements in this new cabinet and in this new company. I was shown pictures of the installations in the Hotel Multnomah and New Washington Hotel, (p. 179) but I had never been up there to see whether the cabinets were up there. I showed Mr. Weeks these two letters concerning Hotel Multnomah and New Washington

(Testimony of Charles S. Wallace.)

Hotel and told him they pertained to the cabinet I was then trying to sell him a contract on. I told him, "Here are some letters from Hotels that have our installations in and would show how well satisfied they were with the cabinet." (Tr. p. 179.) The policy of the company was that ads would be run in cities and then I would call at those cities later on. Mr. Marshall would keep me advised where I was to go. The box you showed me is a demonstrator furnished by Direct-U-Systems. I showed it to Mr. Weeks; at that time he had on it the wording "Property of Direct-U-Systems, Los Angeles, California, patent pending." (Tr. p. 181.) I received this circular letter which you are showing me, which is a typewritten instrument, from Mr. Marshall who told me this was the general procedure to follow. (p. 182). I utilize material or ideas from that document in making sales. (Tr. p. 183.)

Here the Government introduced Exhibit 25, as follows:

"Directly upon arrival in a city it is [29] advisable to either get the prospect on the telephone and arrange an appointment with him, keeping in mind that it is well to make the appointment at a time that is convenient with him, but not forgetting that he should be expecting you, as he has been advised that you will advise him of your arrival. If he has no telephone it is well to send him a telegram, which as a rule costs 15 or 20 cents, otherwise a special delivery letter.

(Testimony of Charles S. Wallace.)

“By sending either a special delivery, or better yet, a wire, it immediately demands his attention and is quite impressive and should be conducive of faster action on his part to arrange for an appointment.

“I would not tell him the length of time that you feel the interview will require, as that would be dependent on his interest and how he grasps the deal.

“I would schedule the appointments about an hour apart, as this time will slip by very fast, and if you get the proper reaction the appointment may run longer, and if it does it offers you an opportunity to arrange for an appointment later in the same day, or evening.

“Keep in mind that the prospect is coming to you in answer to an advertisement, and he has received a letter that has told him nothing, with the exception that a man with good business experience is desired for a permanent connection with a reasonable income in excess to his present earnings, otherwise he would not, except in [30] occasional instances, be interested in making a new connection. He will in the major portion of the time be somewhat nervous and extremely interested in making a good impression, at least until he has heard the deal.

“It would be well upon his arrival and entrance into the room to attempt to make him comfortable and at ease by discussing the topics of the day, etc., gradually working around to discussion as to what his past experience has been, and this can usually be brought up by simply saying, ‘Mr. Jones, what has

(Testimony of Charles S. Wallace.)

been your line of business?' Leading him along to tell of his past business connections.

"It would be well to make the remark that he has no doubt travelled quite a bit, always helping him build himself up to the point that he believes he is quite a successful business man, and quite a world traveller, as this leads him into the position later that he must admit he can visualize the needs and uses of our equipment.

"You can at this time take out your application blank and start jotting down the various answers to the questions, with a casual remark that you have to submit a report of each interview, and if there are any questions that he is reticent in answering that you will just omit them, but it does assist you in selection of the best applicant, as not only the company, but you yourself, are entirely dependent upon the selection of the right man, particularly when we have a proposition of the unusual merits, as we do, and where we have nothing to sell and the man selected handles all the moneys from that division. [31]

"These spaces are what we derive our revenue from and are what we are interested in securing the services of a resident manager for, not that we want him to personally get out and sell this service, but to supervise two or three salesmen, and to handle the collections and the handling of the moneys. There is no trouble in getting good high-class experienced advertising salesmen, particularly for this

(Testimony of Charles S. Wallace.)

service, we never designate it as advertising, but in reality it is advertising.

“Many advertisers knowing the richness of this market, have expressed surprise at the low price of reaching it in his unique and effective manner.” I will skip some more.

“As I told you, we are not interested in securing the services of a high pressure promoter type of a man, but we are interested in securing the services of a man with good common sense and business experience that will be willing to devote his time to supervisory work, collecting the money, etc.; that is interested in a permanent connection. We are not interested in his being an experienced salesman, or knowing anything about advertising, as he can secure experienced salesmen for this part of the work. Our experience has shown that it is necessary to have some local man to handle the supervising and checking to see that the advertisers sold are really good reputable men or concerns that would be really representative of their respective lines.

“It is only necessary to have two and not over three salesmen, and one of these can be the sales [32] manager, and have actual charge of the salesmen, and the resident manager need only have his contact with him, and that only need be once a day, or even less until the cabinets are installed and then he would only have to handle the collections and the disbursements. The resident manager handles all of the money in his division. He pays the sales-

(Testimony of Charles S. Wallace.)

men, remits to us, pays the lease rental to the hotel, etc.”

In my sales endeavors I made representations substantially as contained in the circular from which you have just read. (Tr. p. 190.)

“Q. Mr. Wallace, you have heard me read this so far? A. Yes.

“Q. Have you in your endeavor to makes sales made representations substantially as stated here?

“A. Substantially, yes, sir.

“Mr. Stoddard: We, you will find, are extremely conservative, and as I told you, we have nothing to sell you, and we are dependent on your success for our profit. A salesman that cannot sell at least one contract a day, and frankly he should sell two or three, would not be the type of salesmen you would keep, but with one sale a day he would make \$12 a day, and if you have two or three salesmen working when they only operate one sale each day, each, it would only take about a month to make an installation, and it should be a great deal less. But you can readily see that you can get the pick of high class men.

“Now we want a local manager to handle all the territory that he can consistently, but we would [33] not want him to handle more than he can supervise. We know that a man should be able to handle the installation of some 20 to 30 systems, and we want to assign sufficient territory that will enable him to make this number of installations. Now, how many

(Testimony of Charles S. Wallace.)

installations do you think could be installed in this territory?"

And this is in parenthesis:

"(You outline in your own mind the territory you think he should have, figure sufficient cities or towns that have 15 or 20 good hotels at least)."

And this is in parenthesis also:

"You can build up the prospect to the point that he should be selling you on the idea that you should put in twice that amount. Then you tell him that you feel, and the survey that the company has made on this territory shows, that you should be able to put in even more than that number, but that you are dependent on his success, and you and the company want to be ultra-conservative, and while you think and feel that the amount of installations should be 20 or 30, you do not want to paint any beautiful pictures. Tell him again that you have nothing to sell him and would rather figure he could sell only half the amount he has said (the prospect) could be installed, that you want to keep the estimate conservative, and keep telling the prospect that.

"You should not have the prospect up to the point where he wants to know about the \$1,500 we advertised for, but don't tell about this, but tell him you want to outline the entire proposition and get his reaction, for if he cannot see [34] where it is a clean, legitimate deal and one that will make him (the prospect) money, and if the prospect is not interested in a permanent connection, and if he can-

(Testimony of Charles S. Wallace.)

not see the merits of our proposition, it would be unnecessary to go into that phase."

"I am skipping some now.

"Now, Mr. Jones, I don't know how this proposition appeals to you, but I feel sure that you have never had a proposition offered to you that affords you the opportunity for a permanent connection with an assured income as this does, nor one that has more ethical points, dealing with only the highest type of business men, offering them an opportunity to get their name and advertisement in a location that they cannot do themselves, an opportunity to reach the money spending public in an economical, dignified, unique and animated way.

"It is my job to select the best man here that it is possible for me to find, as my future income as well as the company's is based entirely upon your success—if you are in earnest, and are really interested in a permanent connection, one that will make you money this year, next, and each succeeding year, this should appeal to you, and we are dependent upon selecting a man with good common business experience, one that we can depend upon, a man that is interested in being guided by a plan that is sound and profitable. This is a mutual deal. Both of us must be successful, and there is sufficient income and profit to make it [35] attractive to all of us.

"Now, Mr. Jones, as I said, we have nothing to sell you, which is true, for we do not sell any of our equipment, but we make all of our installations on

(Testimony of Charles S. Wallace.)

lease basis. We lease the system for the first year for \$750. Now the way the company figures, this lease rental just about pays for the building of the system, its maintenance, upkeep, etc., and then the company gets a 20 per cent royalty, or \$720 which is practically all profit, and it is from this that I receive my compensation, etc.—”

I received for my compensation 30% commission. That is, I got 30% of what the company received. (p. 195) I got 30% commission of the \$3,750 obtained from Mr. Weeks. All I ever got was the money from the initial sale. I told Mr. Weeks I ought to be able to install ten machines as a minimum, and that I ought to be able to make \$7700 out of ten installations. My next sale was to a lady by the name of Flora Fitch. (p. 198) I was with the company off and on for two years. I never did get any royalties that had been paid to the company.

By the Court:

(p. 200) “Did you consider that letter as misleading?”

The Witness:

“I did not at the time.

The Court:

“Well, do you now?”

The Witness:

“Well now that you point it out to me, yes.

I never saw Mr. Weeks while I was in New York but I saw the installations and the cabinets in the

(Testimony of Charles S. Wallace.)

hotels. (p. 210) [36] I did not use the picture of the Sir Francis Drake Hotel installations when I was selling in the East.

[Printer's Note: The following quoted matter are excerpts from a series of letters from Direct-U-Systems to Mr. C. S. Wallace, introduced into evidence on Sept. 22, 1942 as Government's Exhibit No. 27.]

"This deal has been through every kind of fire and it has withstood all attacks. This deal has been before the Federal District Attorney, Attorney Generals of several States, the District Attorney in several cities, as well as the Post Office Inspectors. They spent months on it, trying to find some loop hole on it, and in the end they gave a clean bill of health, which is the only thing that they could possibly do, as the deal is clean, legitimate, meritorious and does offer to a franchise operator an opportunity to get into a business that will prove to be profitable and will give him an opportunity to build up a good business.

"You are aware of the fact that we have spent a great deal of money in setting up the Educational and we are not blessed with any surplus of money, and with this thought in mind we do not understand why you would not be considerate of us." (Tr. pp. 205, 206.)

"We received your wire this morning in reference to Weeks being somewhat excited about the American Map Company. Of course we know nothing of the American Map Company and while it is

(Testimony of Charles S. Wallace.)

quite possible that we have some competition, we know that we have some outstanding features that they would not dare attempt to use.

“You may point out to Mr. Weeks, of course, the hotels we have leases on there would not attempt to even make any installations.

“We have had so many obligations that have piled [37] up so much, that while the check was a couple of godsendings it did not cure all of our ills, and we must be in a position to keep our statement in good shape, and also be able to carry on in case of another slump.

“As I wrote you last Saturday, I expect to come east within the next four or five weeks, but it is necessary that I go to San Francisco and get a couple of deals through before I would be in a position and be padded enough, before I spent the time and money necessary to do a good job in setting up offices and carry on the proper training.

“Of course, the most outstanding disappointment was the fact stated in your wife that Jones would not have his money until the 26th.

“We think you are making a big mistake—in fact it has been proved in many instances—that where these fellows want some time, that you don’t require a deposit. You can get around this by telling them, ‘Now, Mr. Jones, if you can give us a deposit of a couple hundred dollars I think I can hold this territory open.’

“You know we have had several unfortunate instances that have cost not only you, but us, quite a lot of money. We think in every instance you

(Testimony of Charles S. Wallace.)

should insist they give you a check of some kind as a deposit.

“The main thing is that you should get a deposit after this because you know it doesn’t mean anything to get a contract signed.

“As far as Weeks is concerned we would certainly [38] like to work out some kind of a Repurchase Agreement with him. And it might be reasonable to drop in and see him while you are there.”

“It is quite possible we better have Mr. Talbott make up demonstrators with the Detroit Leland on it. This would take away from the East Coast and anything dealing with New York. It might be advantageous.”

Mr. Stoddard (Reading): “Give me your reaction on this and we will give you the necessary information, and so forth, so that you can get him to sign. It might be advantageous to do this. If he isn’t going to be of any help and isn’t going to work, of course we don’t want him to continue on.”

“If the deals you closed had come through, you would have been in pretty good shape all the way through. In fact, we all would have been in good shape.

“We are also making you up a new demonstrator showing the Detroit Leland instead of the New York Installation for your cabinet demonstrator. We believe this will be better and suggest you keep away from mentioning the New York setup.

“We would like to have you go to the Waldorf Astoria. They have a Directory there and get all

(Testimony of Charles S. Wallace.)

the information you can about it. We believe it is an old National Directories System and we would like to get the dope on it. In fact, [39] we would appreciate it if you could copy down the names of the advertisers on there so we could have it. We still have a little interest in that company although it isn't active or operating, but enough interest so we think we can put a stop to them.

"Weeks will have some information on the Robot operations, but don't pay any attention to it. Just go right ahead and saw wood."

"We have had several letters from Singleton—."

"He is extremely anxious to try and work out something. He certainly wants to go on this deal. He sent us all the dope on his house and also on his uncle who is the banker who has the mortgage of about \$400. We guess he was the one he anticipated getting the money to get started on this in the first place. It really is a shame that a man that is sold as much as he is that we can't get to work out the finances some way. From what he says of his house and the report we have on it is that it is a very nice little place and something that should be worth a very safe loan of \$1,000 from some outfit. You might talk to your brother-in-law, he might know someone who would be interested in making a loan of \$1,000 on the place. Singleton claims that the house is worth about \$3,500, but the bank says it is worth about \$2,400.

"We would like to know if you have contacted Weeks."

(Testimony of Charles S. Wallace.)

This is a letter of May 2, 1940 in the same exhibit. [40]

“If he is not satisfied, let’s see if we can work out some sort of a Repurchase Agreement on it. Find out how much money he has actually collected and see if we can’t work out something to get him out of that deal.”

Letter of May 29, 1940:

“Certainly hope you can close the deal there as we are very badly in need of a deal, as it seems that everything has been drifting along and no action from anyone. I don’t know what the trouble is but it has gotten us in a very tight position again, but we know that it will pull out in the next few days.

“We have been terribly short of money, and we will try to get you some money within the next day or two.

“Certainly hope that you made provisions for forwarding your mail, as we sent you a photograph and setup on the Sir Francis Drake, which installation we expect to make within the next few days. We feel that it is advisable to use that instead of any eastern setup while working in the eastern territory.”

That is a letter of May 31, 1940.

“There isn’t much to write about with the exception that we have been going right along and things have been exceedingly tight with us. Morgan has not had a thing in the south, and that bears out the

(Testimony of Charles S. Wallace.)

fact that you were really doing a pretty good job.”

“Mighty glad to get your letter that you had [41] written Thursday and your wire that you had a deal that you expect to close today and I just have a feeling that you will do just this thing, and I am looking for a birthday greeting today and it will sure make us happy—for we sure can use it.

“Foxy is away for a few days as she sure has been working herself to death again and if we can get things going again so we can all have a little folding money it will be swell, and I have just that feeling that we are right on the brink of it.” (Tr. pp. 206-214.)

Cross Examination

By Mr. Stoddard.

This long document which Mr. Marshall gave me was so I could get the general plan outlined of the company and I was careful in talking to prospects to state all of the facts as I know them relative to the company and I never said anything that, to my knowledge, was false and I knew when I went out for the National Directory Systems that they were new in the field. I believe Mr. Marshall told me that the machine had been perfected. I told Mr. Weeks that the Direct-U-Systems was the most beautiful thing and the best one on the market. I told him that there had been a robot on the market but that they were out of business or going out of business. I knew that the National Directory Systems had gone out of business. (p. 217.) I assumed that Mr. Weeks was always dissatisfied and

(Testimony of Charles S. Wallace.)

I do know that Mr. Weeks was not fully cooperating. I know some of the installations which Mr. Weeks had were working. The company advanced me money on my expense account ahead of any commissions and deducted it when I earned the commissions and Mr. Marshall frequently wrote me suggesting that I try not to draw as much money as I wanted. The company always paid me my commissions. It was the advances they objected to. Marshall told me that there [42] were a great many towns the National Systems never went into and that he would pick out these towns for me. (Tr. p. 233.)

RALPH H. BERGEN

was called as a witness on behalf of the Government, and testified as follows:

I am an engineer by occupation and have been a contract purchaser of the Direct-U-Systems. I saw an ad in the San Francisco Examiner in 1940 reading as follows:

“Resident Section Manager, permanent national organization. No personal selling. Income reasonably \$750 per mo. \$2,250 cash required. Returnable. Stand rigid investigation. Box 69120 EX.” [43]

I wrote a postal card answer to this and received a letter signed by Mr. Talbott on the stationery of the Direct-U-Systems and then talked to Mr. Bryant in November, 1940, about this prospect. This

(Testimony of Ralph H. Bergen.)

conversation took place in the Sir Francis Drake where there was a machine on exhibit. (P. 226) Mr. Bryant thought he should easily be able to install five boards in San Francisco the first year. I told Mr. Bryant that my health had been bad for several years and I wanted to get back into some business. I cannot remember what he told me as to whether or not the boards were patented. He told me all the boards that were operating in New York City and named some of the hotels. He showed me a picture of the Times Square Hotel Electrical Directory. He told me that San Francisco was virgin territory and there had not been any machines there before. (P. 233) I gave him at that time a check for \$2,250 relying upon representations that he made to me. I paid a total of about \$4,000 for the franchise rights in San Francisco. I later came down to Los Angeles and met Mr. Talbott and Mr. Marshall. Mr. Marshall was introduced to me as the Sales Manager of the company and Mr. Talbott said that he, Mr. Talbott, was the president. I had a conference with them and nothing was said contrary to what Mr. Bryant had told me. I was shown the machines there in their shop and was told they were working satisfactorily. I do not know that I can honestly state that I had any discussion with Mr. Marshall as to what I would make on a machine a year. I did tell him that I was making this investment for the purpose of making money. (P. 238) Mr. Bryant told me that he had a man in Tennessee who had

(Testimony of Ralph H. Bergen.)

been highly successful with this business and I sent this man the money for bus fare to come to San Francisco. Mr. Malone did go to work for me and worked about two and one half months. One of the cabinets at the Sir Francis Drake was turned over to me [44] as one of my cabinets but at that time the ads appearing in it had not been paid for. The machine was used as a sample. (P. 240) I got salesmen and put in every effort I could to sell spaces. I sold three spaces at \$10 per month each. There was not much difficulty with the electrical directory but the card display did not work satisfactorily at all. The cards would get black streaks on them. I communicated this to the Direct-U-Systems. I never did get any other hotels to sign up for advertising. (P. 243) I later wrote Mr. Talbott and told him that I had discovered there was a franchise operator who had preceded me to San Francisco. Mr. Marshall did not tell me that there had been a contractor operator at San Francisco before I came in. (P. 246) I received the following letter:

“We hired Mr. Burke to compile the data in conjunction with one of the Civic Organizations there and which the demonstrator was built and placed in the Sir Francis Drake.

“We regret very much that you have not had this information and we will hurry it along.

“We have no record of the sales that Mr. Burke made, with the exception that it does run in our memory that there was a Dr. Lerner Waldo, but

(Testimony of Ralph H. Bergen.)

if we had any other data as to the sales that he made, it would be with the data that we gave to Mr. Bryant to turn over to you. Undoubtedly Burke can give you this information if you are in touch with him."

I met a Mr. Belling who called at my office in San Francisco. After talking to him I wrote the company the substance of the conversation. (Tr. p. 248) [The following is from Government's Exhibit No. 29.]

"Mr. C. W. Talbott,

"Direct-U-Systems, Inc.

"Dear Mr. Talbott: [45]

"About a week ago a Mr. Belling called upon me and stated that he had been negotiating with Mr. Marsh relative to taking up a franchise to operate Direct-U-Systems in Los Angeles. Mr. Marsh had made certain statements to him with reference to operations in San Francisco, and he came up here to check up for himself, just as I went to Los Angeles.

"Mr. Belling asked me certain questions which I answered frankly and to the best of my knowledge, after which he told me that the statements made to him by Mr. Marsh were directly opposite to what I had told him. After some conversation I suggested that he go directly to you, feeling in my own mind that you could and would clear up the misunderstandings, and I also told him I would appreciate it if he would drop me a line and let me know what he found out.

(Testimony of Ralph H. Bergen.)

“Mr. Marsh told Mr. Belling that the San Francisco board in the Sir Francis Drake Hotel had been completely sold and paid for by the advertisers, and that the hotel had been paid \$150.00 by the San Francisco agent. This according to his note of today was again confirmed, after his conversation with me, by Mr. Marshall and Mr. Marsh, and finally by yourself except that your statement was that the \$150.00 was paid to the hotel by the home office. Mr. Belling also mentioned a Mr. Brown whom you stated made this deal, but was no longer with the company.

“Mr. Bryant told me that the rental for the first year had been paid to the hotel, but very definitely [46] he told me the space on the board had not been sold, and that the first job in this territory should be the selling of those spaces. This understanding was certainly confirmed in my conversations in your office with yourself and Mr. Marshall. I will recall to your mind the statements Mr. Marshall made relative to the Lions Club's desire to take over the sponsorship of the Sir Francis Drake Board. There too I wish to state that when I called upon Mr. Hampton, president of the Lions Club, and made the statement to him that the club wished to sponsor the board, his immediate reply was that there was some mistake or misunderstanding, for he had emphatically stated they were not interested. I have succeeded in getting them mildly interested. Also I have been out with one of my salesmen on a few calls, and on one or two

(Testimony of Ralph H. Bergen.)

occasions someone mentioned that a year or two ago some one had tried to sell him this proposition. Another one said, 'Oh, yes, I have seen one of these boards in a Hollywood hotel a year or two ago!' I had been told that the only board installed in Los Angeles or vicinity was in the Alexandria, or if I have mistaken the name, in a hotel on South Main Street adjacent to the Rosslyn.

"Mr. Belling was also told that a board that was in your shop was being prepared for shipment to the El Cortez here, which, of course is a misstatement of the truth.

"Now, Mr. Talbott, you certainly must realize, that all this is very disturbing to me, and certainly is not conducive to the best of results. I have not [47] been accustomed in the past to working under such conditions, and I have no expectations of starting now to deal in misstatements of fact, in-direction and suspicion. I am sure that there is some logical explanation of all this and I have every confidence that you can clear it up for me and remove all these doubts. That is why I am writing to you directly and personally.

"Please give me the full and detailed story of this situation so that I may work with my eyes open.

"Sincerely yours,

"Ralph H. Bergen."

I received a reply as follows: (Government's Exhibit No. 30)

"We hired Mr. Burke to compile the data in

(Testimony of Ralph H. Bergen.)

conjunction with one of the Civic Organizations there and which the demonstrator was built and placed in the Sir Francis Drake.

"We regret very much that you have not had this information and we will hurry it along.

"We have no record of the sales that Mr. Burke made, with the exception that it does run in our memory that there was a Dr. Lerner Waldo, but if we had any other data as to the sales that he made, it would be with the data that we gave to Mr. Bryant to turn over to you. Undoubtedly Burke can give you this information if you are in touch with him."

"Referring to your letter of the 18th. You may rest assured that it is our desire to cooperate with you in every way possible. As far as the requirements that we have made on that territory. [48] We feel that on the basis of five systems is the very minimum when you consider that it takes in the major portion of California and should enable you to make a great many installations.

"We feel confident that it can be developed by you to one of the largest potential earning organizations in the country as you have undoubtedly a very good organization, and from what we understand, Mr. Malone is an extremely high type, capable sales executive and should have no difficulty in developing that territory.

"Mr. Belling did not give you the true situation, and as far as Mr. Burke, the arrangement that we had with him was quite different than the poten-

(Testimony of Ralph H. Bergen.)

tialities that you have. Mr. Burke felt that we should require at least \$7500 for that particular area alone.

“We are confident that Mr. Malone could handle the disposing of that part of your territory very successfully and without any difficulty, and undoubtedly a very good organization, and from what we understand, Mr. Malone is an extremely high type, capable sales executive and should have no difficulty in developing that territory.

“Mr. Belling did not give you the true situation, and as far as Mr. Burke, the arrangement that we had with him was quite different than the potentialities that you have. Mr. Burke felt that we should require at least \$7500 for that particular area alone.

“We are confident that Mr. Malone could handle the disposing of that part of your territory very successfully and without any difficulty, and undoubtedly arrange for the development of the Bay territory on [49] the basis of the advance lease rentals on three systems which would be entirely reasonable and quite equitable inasmuch as you would or could include it in San Jose.”

I received another letter from Mr. Talbott, dated on or about December 9, 1940 (Government's Exhibit 31, p. 254 Tr.) reading:

“We wish to acknowledge receipt of your favor of the 7th, in reference to a Mr. Belling calling upon you, and apparently this man either deliber-

(Testimony of Ralph H. Bergen.)

ately misunderstood, or is trying to raise some sort of misunderstanding, as there most certainly was no statement made either by Mr. Marsh, Marshall or myself, relative to the installation at San Francisco, with the exception to state that it was in. As far as it being sold, etc., there was never any discussion about it at all."

"As we advised you a few years ago, we had decided to start in there, and about that time the hotel strike started and we withdrew and there have been no operations in there since that time."

"Certainly Mr. Billings was not told that an installation was being prepared for shipment to the El Cortez Hotel, for as far as we know, there have been no sales made on the El Cortez Hotel.

"What Mr. Billings was shown was a demonstrator that Mr. Bryant desired to carry with him, which is an exact replica of the Sir Francis Drake Hotel."

I was offered a re-purchase agreement, Government's Exhibit 33, as follows: [50]

"Repurchase Agreement.

"This Agreement, entered into this 31st day of January, 1941, by and between Direct-U-Systems of Los Angeles, California, hereinafter referred to as the party of the first party; and Ralph H. Bergen of San Francisco, California, hereinafter designated as the party of the second part,

"Whereas, the parties above entered into an agreement on the 8th day of November, 1940 and also on the 12th day of November, 1940 whereby

(Testimony of Ralph H. Bergen.)

the party of the second part did agree to lease and did lease five (5) Electric Directory Systems from the party of the first party, and also ten (10) Animators and did pay as advance lease rental the sum of \$300 and Thirty-seven hundred fifth (\$3750) dollars, respectively,

“The party of the second part has not taken delivery of the systems as provided in the above designated agreement, and the party of the second part does find himself as unable to fulfill his portion of the above designated contract.

“The party of the first part desires to have the territory as provided for in the above contract, developed whereby it can collect the royalties as provided under the agreement.

“Now, Therefore, for and in consideration of \$1.00 receipt of which is hereby acknowledged, and the premises and the mutual promises of the parties and the consideration passing and to pass from each other to other, it is agreed as follows:

“1. The party of the second part hereby agrees [51] to the complete cancellation of the agreement and does renounce and relinquish any and all interests or claims in the agreement as entered into by the parties under the dates of November 8, 1940 and November 12th, 1940.

“2. The party of the second part agrees that it shall pay or cause to be paid to the party of the second part, 25% of all the monies it receives from any source either as lease rentals or royalties

(Testimony of Ralph H. Bergen.)

from the territory designated in the agreement after sales expense and cabinet costs have been deducted, until the parties of the second part have received the total sum of \$4050.00. .

“3. The added consideration for the agreement and promise of the party of the first part to pay to the party of the second part the monies as outlined in the above paragraph is based on the agreement of party of the second part to assist and cooperate with the party of the first part in developing and/or transferring of any rights in the territory as outlined in the original agreement.

“4. Party of the first part hereby agrees to devote its best effort to place the territory covered by the agreement on a paying and profitable basis without unnecessary delay.

“5. Party of the second part agrees to deliver the sales equipment loaned to party of the second part which is the property of the party of the first part on demand. [52]

“It is mutually understood and agreed that this equipment, executed in duplicate, supersedes any and all previous agreements and contains the full and complete understanding between the parties hereto.”

And as appears on page 260, I did not sign this agreement.

I sent the letter of which you show me a copy dated December 13, 1940. (Government's Exhibit 37.)

(Testimony of Ralph H. Bergen.)

GOVERNMENT'S EXHIBIT No. 37

December 13, 1940

Direct-U-Systems
7225 Beverly Blvd.
Los Angeles, California

Dear Mr. Talbot:

This acknowledges receipt of your letter of the 12th and the copy of the contract with the Hotel Oakland. I propose to start work in Oakland just as soon as I can after the first of the year. I want to get the sale of the Sir Francis Drake well started first. I expect by the first of the year to have at least four good salesmen, so that as soon as the Drake board is really going I can shift one or two of the men to Oakland.

In your previous experience have you found it necessary to accept some contracts on a monthly payment basis with a non-revocable annual contract? We are running into that here. We have established the price on the Sir Francis Drake board at \$120 per year, and plan at present to establish that same price on the St. Francis and Palace. We have sold one space on the Sir Francis Drake board to a well established, large, and old Beauty Salon, but could only get it on the basis of \$10 monthly payments. We have also had two other concerns turn us down on the Sir Francis Drake but express willingness to sign one for the Palace and one for the St. Francis. Both are highly reputable concerns of long standing

(Testimony of Ralph H. Bergen.)

so we accepted their contracts without any cash payment subject to our ability to close with those hotels. But here again they both insisted on monthly payments.

There is a problem I wish to discuss with you concerning the Sir Francis Drake board. As the map now appears on that board about 60% of it is south of Market Street in the wholesale, industrial, and shipping section of the City, where there is scarcely a spot that is of any interest to the hotel guests. On the other hand all the major hotels, all of the retail shopping district, all entertainment and night spots, and business and professional men are north of Market Street, which occupies only about 40% of the map as now shown. Therefore, I think that for the final installation in the Sir Francis Drake a new map should be installed. Incidentally since all the major hotels are within a few blocks of each other in this Market Street and North of Market district, the chances are that the same map will serve for most, if not all, of them. I am enclosing two maps of the City showing in one case approximately the area now shown, and in the other my recommendation of the area that should be shown.

In the meantime the one space we have sold on the Sir Francis Drake was on the basis of \$10 down, \$10 January 1st and monthly thereafter. Therefore, I would like if possible to place his name on the board before January 1st, even tho

(Testimony of Ralph H. Bergen.)

we may change the whole map eventually. This party has not only taken space on the Drake but has asked for an option on the Palace and St. Francis. We hope to contract with both those hotels next week, in which case this party will sign additional contracts, and at the same time all information will be secured so you could make up the cards for me to go on the present board.

Has it been customary to make any concession in price to a client if he contracts at one time for space on several boards. We have thought that if necessary to secure such contracts, it would be good business to make a price of \$25 per month for three boards instead of a straight price of \$10 per month per board. Would such an arrangement raise any complications? Would you consider it good policy.

The cards on the Sir Francis Drake animator have become very badly marred due to a bad roller that was on that machine while Mr. Bryant was here. I am enclosing a couple scraps of one card to show the extent of the disfigureation. It is a bad demonstration and many very desirable clients are looking at that board. The Managers of both the St. Francis and Palace are going to look at it. therefore, I think that we should remove all of those cards and replace them with a few new ones. I am enclosing a sheet of suggested copy for eight new cards; will you kindly have them made up for me and send them as quickly as possible. The

(Testimony of Ralph H. Bergen.)
present condition of that animator is really very
bad.

Sincerely yours,
R. H. BERGEN

RHB/s
Enc.

[Endorsed]: Filed 9/23/42.

In this letter I made suggestions as to improvements that could be made upon the map but the map was never changed. In the next letter

GOVERNMENT'S EXHIBIT No. 39

R. H. Bergen
Manager

YUkon 0820

Direct-U-Systems of Northern California
Franchise Owner
Direct-U-Systems
105 Montgomery St.
San Francisco, California

February 13, 1941

Mr. C. W. Talbott
7225 Beverly Blvd.
Los Angeles, California

Dear Mr. Talbott:

I have been at the Sir Francis Drake today and find that Mr. Starkey was compelled to force the door to the lower advertising space for use by the hotel. The lock is completely broken, and Mr.

(Testimony of Ralph H. Bergen.)

Starkey requests that I ask you to send him at once a new lock and keys for that door.

I am sure, Mr. Talbott, that neither you nor I wish to see anything cause any injury to the business in this territory. We both of us hope and expect to reach some agreement that is mutually satisfactory.

Now the condition of the animator and display cards is certainly giving this business a black eye, and I entreat you to do something, and do it promptly, to eliminate the difficulty. Please get it fixed up so that it does not hurt the possibilities of a resale of this territory.

Yours truly,

R. H. BERGEN

RHB/s

(Cut) Our Direct-U-Systems direct buying dollars
to you and tell your message

[Endorsed]: Filed 9/23/42.

(Government's Exhibit 39) which you show me I wrote to Mr. Talbott calling attention to defects in the machine at the Sir Francis Drake, and again in the letter under date of January 10, 1941 made further complaint. I wrote Mr. Talbott again on January 27, 1941 (Government's No. 41), containing in part the following "When I first undertook the Direct-U-Systems franchise I talked with you in Los Angeles, I told you that I had

(Testimony of Ralph H. Bergen.)

been inactive for a year and a half following a long period of ill health, but that I felt that my health was again regained. However, I find the strain of this business, and the worries attendant upon it have played hob with me. I have been sick a good deal of the time since Christmas and, consequently, if I could get out entirely I would be glad to do so, even at some sacrifice of the original capital I put into it. What kind of proposition would you make to take it off my hands?" Signed "Mr. Bergen." (Tr. p. 277.)

I never made any money out of this enterprise and I never got the return of any part of my \$4,050.

Cross Examination

By Mr. Stoddard:

I signed the agreement which you showed me dated November 6, 1940.

(This agreement was received in evidence as Defendant's Exhibit EE. Also two other agreements marked Exhibit FF and Exhibit GG.) [53]

DEFENDANT'S EXHIBIT EE

THIS AGREEMENT

made and entered into this 6th day of November 1940, by and between Direct-U-Systems, a California corporation with principal place of business at Los Angeles, California, herein termed "Lessor, and Ralph H. Bergen, with permanent address at 614 McLaughlin Ave., Richmond, Calif., herein termed "Lessee",

(Testimony of Ralph H. Bergen.)

Witnesseth: That in consideration of these premises and the mutual promises of the parties, and of the consideration passing and to pass from each to the other, it is hereby agreed as follows:

1. Lessor grants to Lessee exclusive license to use, operate and maintain Lessor's so-called "Direct-U-Systems" for a period of three years from date, in the following-described territory, being part of the State of California, U.S.A., to wit:

San Francisco and San Mateo Counties, California. (Inclusive)

2. It is agreed that the total number of Direct-U-Systems which Lessee may reasonably expect with due diligence to install and maintain within said territory is Three; but Lessor shall supply to Lessee all Direct-U-Systems Lessee may lease to install within the described territory hereunder; and if Lessee shall so lease and install Three Direct-U-Systems within the effective period hereof, then Lessee shall have the option to extend this Agreement in all its terms for an additional period of Fifty years.

3. Lessor shall lease to Lessee, and Lessee shall take from Lessor, as personal property with title remaining in Lessor, certain Direct-U-Systems (with supplementary material) under the following terms:

(a) For each Direct-U-System: a lease rental of seven hundred fifty dollars (\$750.00) covering the first year after delivery by Lessor, and a lease rental of two hundred fifty dollars (\$250.00) for each year thereafter.

(Testimony of Ralph H. Bergen.)

(b) In addition to lease rentals, Lessee shall pay to Lessor a royalty of fifteen percentum (15%) of all moneys received by Lessee for use of space on Direct-U-Systems, and thereto shall transmit promptly to Lessor a copy of each agreement made concerning space on each Direct-U-System leased hereunder.

(c) All said lease rentals, except as specified below, shall be due and payable thirty days after delivery by Lessor of the Direct-U-Systems concerned. All said royalties shall be due and payable upon receipt by Lessee of payment for space rented.

4. Lessee hereby at this time leases from Lessor three (3) Direct-U-Systems, and Lessee hereby remits to Lessor the amount of Twenty two hundred fifty dollars (\$2250.00) as payment complete of first year's lease rental thereon.

5. Lessor shall deliver Direct-U-Systems to Lessee at any City railway depot designated by Lessee, promptly after receiving full specifications and shipping instructions from Lessee. On all Direct-U-Systems installed hereunder, Lessor shall maintain, replace or repair as made necessary by damage or mechanical failure.

6. Lessee shall have full use and advantage of all leases of locations for Direct-U-Systems secured in Lessee's territory and shall pay the rentals on such locations as he utilizes. Lessor and its agents shall cooperate with and assist Lessee in Lessee's

(Testimony of Ralph H. Bergen.)

operations hereunder, including assistance in training Lessee's salesmen, and shall give and/or loan Lessee on request, sales promotion material as per list attached hereto.

7. Lessee shall operate hereunder solely as a Lessee and independent contractor, and nothing shall be done or required hereunder which might constitute Lessee an agent or partner of Lessor, or by which Lessee may create any liability for Lessor not specified herein. This Agreement contains the full understanding between the parties, and no agent of Lessor is authorized to modify it, or to add other than reasonable items per Lessor's instructions in spaces provided therefor. This agreement supersedes and cancels all previous agreements between the parties.

In Witness Whereof the parties have affixed their signatures upon the day first written herein.

Lessor: DIRECT-U-SYSTEMS

By ROLLAND R. BRYANT

Lessee RALPH H. BERGEN

Lessee

ANTICIPATED INCOME AND EXPENSE

First Year

Breakdown on anticipated Income (gross and net) for the First Year, based on 20 Spaces Rented at the rate of \$156.00 per year for each space.

Income: 20 rented spaces at \$156.00 per year	\$3,120.00
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Expenditures by Franchise Operator:

Lease rental to Lessor.....	\$ 750.00
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Location lease (Max. 10%) Average	
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\$100 yearly	312.00
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(Testimony of Ralph H. Bergen.)

Selling Expense—should not exceed 20%	624.00
Sales Manager (if desired) 5%.....	156.00
Royalty to Lessor: 15%.....	468.00
	<hr/>
Estimated total expenditures.....	\$2,310.00
	<hr/>
Net Profit to Franchise Operator, each installation	810.00
	<hr/> <hr/>
Lessee acting as his own Sales Man- ager earning increase.....	156.00
	<hr/>
Net Profit when Sales Manager is eliminated	\$ 966.00
Second—And Each Following—Year	
Income: as above.....	\$3,120.00
Expenditures	
Lease rental to Lessor (Reduced from \$750.00)	\$ 250.00
Location Lease (Maximum: 10%).....	312.00
Selling Expense—should not exceed 20%	624.00
Sales Manager (if desired) 5%.....	156.00
Royalty to Lessor: 15%.....	468.00
	<hr/>
Estimated total expenditures.....	\$1,810.00
	<hr/>
Net Profit to Franchise Operator, each installation	\$1,310.00
	<hr/> <hr/>
Lessee acting as his own Sales Manager earnings increase	156.00
	<hr/>
Net Profit when Sales Manager is eliminated	\$1,466.00

Eight installations First Year.....	\$ 7,728.00
Eight installations Second Year and Each Suc- ceeding Year	\$11,728.00

(Testimony of Ralph H. Bergen.)

EQUIPMENT

Direct-U-Systems will loan to Franchise Operator the following equipment:

1. 3 Electrical Demonstration Cabinets
 2. 3 Illustrated Presentation Books, (Zipper Cases) (Complete)
 3. 6 Selling Suggestion Circulars (D-15)
Furnished Free: Up to—
 4. 200 sets Advertisers' Service Agreements Imprinted (quadruplicate) (D-9)
 5. Hotel Lease Forms (Triplicate) (D-6)
 6. Hotel Room Reminder Cards (as needed) (shipped with each installation) (D-10)
 7. 200 Advertisers' Map Location Charts (D-5)
 8. 200 Letterheads—Imprinted with name of Franchise Operator (D-11)
 9. 200 Envelopes—Imprinted with name of Franchise Operator (D-12)
 10. 200—Announcement or preparatory letters and envelopes multigraphed on above, filled in and addressed with names and addresses of Franchise Operator's prospects, from list furnished by him, with 2c stamps attached, shipped to Franchise Operator for his signature and mailing prior to Salesman's contact. (D-13)
 11. 250 Folders—To include in the advance letters. (D-14)
 12. 500 Business Cards
- D-18

[Endorsed]: Filed 9/23/42.

(Testimony of Ralph H. Bergen.)

DEFENDANT'S EXHIBIT FF

THIS AGREEMENT

made and entered into this 12th day of November 1940, by and between Direct-U-Systems, a California corporation with principal place of business at Los Angeles, California, herein termed "Lessor, and Ralph H. Bergen, with permanent address at 614 Mc Laughlin Ave., Richmond, Calif., herein termed "Lessee",

Witnesseth: That in consideration of these premises and the mutual promises of the parties, and of the consideration passing and to pass from each to the other, it is hereby agreed as follows:

1. Lessor grants to Lessee exclusive license to use, operate and maintain Lessor's so-called "Direct-U-Systems" for a period of three years from date, in the following-described territory, being part of the State of California, U.S.A., to wit:

All of that part of the state of California North of a line drawn West to East twenty five, (25) miles South of Santa Maria, California. And to include Bakersfield, California.

2. It is agreed that the total number of Direct-U-Systems which Lessee may reasonably expect with due diligence to install and maintain within said territory is Five (5); but Lessor shall supply to Lessee all Direct-U-Systems Lessee may lease to install within the described territory hereunder; and if Lessee shall so lease and install Five (5) Direct-

(Testimony of Ralph H. Bergen.)

U-Systems within the effective period hereof, then Lessee shall have the option to extend this Agreement in all its terms for an additional period of Fifty years.

3. Lessor shall lease to Lessee, and Lessee shall take from Lessor, as personal property with title remaining in Lessor, certain Direct-U-Systems (with supplementary material) under the following terms:

(a) For each Direct-U-System: a lease rental of seven hundred fifty dollars (\$750.00) covering the first year after delivery by Lessor, and a lease rental of two hundred fifty dollars (\$250.00) for each year thereafter.

(b) In addition to lease rentals, Lessee shall pay to Lessor a royalty of fifteen percentum (15%) of all moneys received by Lessee for use of space on Direct-U-Systems, and thereto shall transmit promptly to Lessor a copy of each agreement made concerning space on each Direct-U-System leased hereunder.

(c) All said lease rentals, except as specified below, shall be due and payable thirty days after delivery by Lessor of the Direct-U-Systems concerned. All said royalties shall be due and payable upon receipt by Lessee of payment for space rented.

4. Lessee hereby at this time leases from Lessor five (5) Direct-U-Systems, and Lessee hereby remits to Lessor the amount of Thirty seven hundred fifty dollars (\$3750.00) as payment complete of first year's lease rental thereon.

(Testimony of Ralph H. Bergen.)

5. Lessor shall deliver Direct-U-Systems to Lessee at any City railway depot designated by Lessee, promptly after receiving full specifications and shipping instructions from Lessee. On all Direct-U-Systems installed hereunder, Lessor shall maintain, replace or repair as made necessary by damage or mechanical failure.

6. Lessee shall have full use and advantage of all leases of locations for Direct-U-Systems secured in Lessee's territory and shall pay the rentals on such locations as he utilizes. Lessor and its agents shall cooperate with and assist Lessee in Lessee's operations hereunder, including assistance in training Lessee's salesmen, and shall give and/or loan Lessee on request, sales promotion material as per list attached hereto.

7. Lessee shall operate hereunder solely as a Lessee and independent contractor, and nothing shall be done or required hereunder which might constitute Lessee an agent or partner of Lessor, or by which Lessee may create any liability for Lessor not specified herein. This Agreement contains the full understanding between the parties, and no agent of Lessor is authorized to modify it, or to add other than reasonable items per Lessor's instructions in spaces provided therefor. This agreement supersedes and cancels all previous agreements between the parties.

(Testimony of Ralph H. Bergen.)

In Witness Whereof the parties have affixed their signatures upon the day first written herein.

Lessor: DIRECT-U-SYSTEMS

By ROLLAND R. BRYANT

Lessee RALPH H. BERGEN

Lessee

ANTICIPATED INCOME AND EXPENSE

First Year

Breakdown on anticipated Income (gross and net) for the First Year, based on 20 Spaces Rented at the rate of \$156.00 per year for each space.

Income: 20 rented spaces at \$156.00 per year	\$3,120.00
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Expenditures by Franchise Operator:

Lease rental to Lessor.....	\$ 750.00
Location lease (Max. 10%) Average \$100 yearly	312.00
Selling Expense—should not exceed 20%	624.00
Sales Manager (if desired) 5%.....	156.00
Royalty to Lessor: 15%.....	468.00

Estimated total expenditures.....	\$2,310.00
-----------------------------------	------------

Net Profit to Franchise Operator, each installation	810.00
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Lessee acting as his own Sales Manager earning increase.....	156.00
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Net Profit when Sales Manager is eliminated	\$ 966.00
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Second—And Each Following—Year

Income: as above.....	\$3,120.00
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Expenditures

Lease rental to Lessor (Reduced from \$750.00)	\$ 250.00
Location Lease (Maximum: 10%).....	312.00

(Testimony of Ralph H. Bergen.)

Selling Expense—should not exceed	
20%	624.00
Sales Manager (if desired) 5%.....	156.00
Royalty to Lessor: 15%.....	468.00
	<hr/>
Estimated total expenditures.....	\$1,810.00
	<hr/>
Net Profit to Franchise Operator, each	
installation	\$1,310.00
	<hr/>
Lessee acting as his own Sales Manager	
earnings increase	156.00
	<hr/>
Net Profit when Sales Manager is	
eliminated	\$1,466.00

Eight installations First Year.....	\$ 7,728.00
Eight installations Second Year and Each Succeeding Year	\$11,728.00
D-17	

EQUIPMENT

Direct-U-Systems will loan to Franchise Operator the following equipment:

1. 3 Electrical Demonstration Cabinets
2. 3 Illustrated Presentation Books, (Zipper Cases) (Complete)
3. 6 Selling Suggestion Circulars (D-15)
Furnished Free: Up to—
4. 200 sets Advertisers' Service Agreements Imprinted (quadruplicate) (D-9)
5. Hotel Lease Forms (Triplicate) (D-6)
6. Hotel Room Reminder Cards (as needed) (shipped with each installation) (D-10)
7. 200 Advertisers' Map Location Charts (D-5)

(Testimony of Ralph H. Bergen.)

8. 200 Letterheads—Imprinted with name of Franchise Operator (D-11)

9. 200 Envelopes—Imprinted with name of Franchise Operator (D-12)

10. 200—Announcement or preparatory letters and envelopes multigraphed on above, filled in and addressed with names and addresses of Franchise Operator's prospects, from list furnished by him, with 2c stamps attached, shipped to Franchise Operator for his signature and mailing prior to Salesman's contact. (D-13)

11. 250 Folders—To include in the advance letters. (D-14)

12. 500 Business Cards.

D-18

[Endorsed]: Filed 9/23/42.

DEFENDANT'S EXHIBIT GG

THIS AGREEMENT

made and entered into this 8th day of November, 1940, by and between Direct-U-Systems, a California corporation with principal place of business at Los Angeles, California, herein termed "Lessor", and Ralph H. Bergen with permanent address at 614 McLaughlin Avenue, Richmond, California, herein termed "Lessee",

Witnesseth: That in consideration of these premises and the mutual promises of the parties, and of

(Testimony of Ralph H. Bergen.)

the consideration passing and to pass from each to the other, it is hereby agreed as follows:

1. Lessor grants to Lessee exclusive license to use, operate and maintain Lessor's so-called "Direct-U-Displays" for a period of three years from date, in the following described territory, being part of the State of California, U. S. A., to-wit:

San Francisco, San Mateo, Alameda, and Contra Costa Counties.

2. It is agreed that the total number of Direct-U-Displays which Lessee may reasonably expect with due diligence to install and maintain within said territory is Ten; but Lessor shall supply to Lessee all Direct-U-Displays Lessee may lease to install within the described territory hereunder; and if Lessee shall so lease and install Ten Direct-U-Displays within the effective period hereof, then Lessee shall have the option to extend this Agreement in all its terms for an additional period of Ten years.

3. Lessor shall lease to Lessee, and Lessee shall take from Lessor, as personal property with title remaining in Lessor, certain Direct-U-Displays (with supplementary material) under the following terms:

(a) For each Direct-U-Display: a lease rental of Three hundred dollars (\$300.00) covering the first year after delivery by Lessor, and a lease rental of two hundred dollars (\$200.00) for the second year, and one hundred dollars (\$100.00) for the third year and each succeeding year.

(Testimony of Ralph H. Bergen.)

4. Lessee hereby at this time leases from Lessor Five (5) Direct-U-Displays, and Lessee hereby remits to Lessor the amount of Three Hundred dollars (\$300.00) as payment complete of first year's lease rental on the first display.

5. Lessor shall deliver Direct-U-Displays to Lessee at any City railway depot designated by Lessee, promptly after receiving full specifications and shipping instructions from Lessee.

6. Lessee shall have full use and advantage of all leases of locations for Direct-U-Displays secured in Lessee's territory and shall pay the rentals on such locations as he utilizes. Lessor and its agents shall cooperate with and assist Lessee in Lessee's operations hereunder, including assistance in training Lessee's salesmen, and shall give and/or loan Lessee on request, sales promotion material as per list attached hereto.

7. Lessee shall operate hereunder solely as a Lessee and independent contractor, and nothing shall be done or required hereunder which might constitute Lessee an agent or partner of Lessor, or by which Lessee may create any liability for Lessor not specified herein. This Agreement contains the full understanding between the parties, and no agent of Lessor is authorized to modify it, or to add other than reasonable items per Lessor's instructions, in spaces provided therefor. This Agreement supersedes and cancels all previous agreements between the parties.

(Testimony of Ralph H. Bergen.)

In Witness Whereof the parties have affixed their signatures upon the day first written herein.

Lessor: DIRECT-U-SYSTEMS

By ROLLAND R. BRYANT

Lessee RALPH H. BERGEN

[Endorsed]: Filed 9/23/42.

These latter agreements extended the territory which I was to have but I did not intend after I started on the business to sell it to anybody else. I never tried to develop any territory except the San Francisco territory. It is true (P. 284) that I sued the Direct-U-Systems for \$31,000 and that suit is now pending. It is true that I signed a statement that the Direct-U-Systems had done everything they agreed to do. I signed Exhibits JJ, KK, LL, MM, NN, and OO.

(Testimony of Ralph H. Bergen.)

DEFENDANT'S EXHIBIT JJ

R. H. Bergen
Manager

YUkon 0820

Direct-U-Systems of Northern California
Franchise Owner
Direct-U-Systems
105 Montgomery St.
San Francisco, California

Dec. 24, 1940.

Mr. C. W. Talbott, Pres.,
Direct-U-Systems,
7225 Beverly Blvd.,
Los Angeles, Calif.

Dear Mr. Talbott:

Thank you for your letter of the 23rd. I received the listing cards but have not received the business cards nor the animator cards. They will probably be along in a day or *or* two.

With reference to the map, I have already sent you my recommendation. I appreciate that it would be well to show the Embarcadero, if possible. You will note I have not cut it all off. In fact, my major criticism of the map that is now on the Sir Francis Drake board is that it does not show Fisherman's Wharf, and the North Beach section. My suggested map does show that and a portion of the Embarcadero adjacent to it. With your greater experience in preparing the maps, if you see how we could show the Embarcadero around to the Ferry

(Testimony of Ralph H. Bergen.)

Building, and still be able to show a strip of the ocean beach section, that would be fine. Perhaps that could be done in any one of three ways, namely:

(1) Reduce the width of the ocean beach strip I suggested.

(2) Reduce the space I allowed between the two sections of the map.

(3) Draw the whole thing to slightly smaller scale.

You have my ideas; I want to show mainly the north of Market Street district inclusive of Fisherman's Wharf, eliminating most of the South of Market, including only enough of it to be able to show directional arrows to the bay bridge approaches, peninsula highways, etc. I want to show a narrow strip of the ocean beach in order to locate such spots as the Cliff House, Sutro Baths, Robert's at the Beach, etc.; and finally, I want to show as much of the Embarcadero from Fisherman's Wharf to the Ferry Building, as I can consistent with the first two requirements. Please do your best to accomplish these results as far as possible. I leave it in your hands.

I received a Christmas card from Mr. Bryant mailed in Los Angeles. I did not know where he was, but if he is still there, will you please extend to him and Mrs. Bryant the best wishes of Mrs. Bergen and myself for the Christmas season, and tell him I certainly hope he gets back up this way before leaving the coast. I would like to talk to him.

(Testimony of Ralph H. Bergen.)

Thank you for the efforts of your organization concerning T.W.A. and others.

Yes, I am fully expecting to make real progress immediately after the holidays. I feel that the reception we have had to our solicitations has been all that could be expected at this time of year and that we have a nice backlog of business that will crack soon.

I trust you had a very Merry Christmas, and that the New Year will be good to you.

Very truly yours,

R. H. BERGEN.

Ralph H. Bergen.

DIRECT-U-SYSTEMS.

RHB/S

(Cut)

Our Direct-U-Systems Direct Buying Dollars to
You and Tell Your Message

[Endorsed]: Filed 9/23/42.

(Testimony of Ralph H. Bergen.)

DEFENDANT'S EXHIBIT KK

R. H. Bergen
Manager

YUkon 0820

Direct-U-Systems of Northern California
Franchise Owner
Direct-U-Systems
105 Montgomery St.
San Francisco, California

December 20, 1940.

Mr. C. W. Talbott
7225 Beverly Blvd.
Los Angeles, California

Dear Mr. Talbott:

A day or two ago I asked you to make up for me eight 8 by 10 cards to replace the unsightly ones that are now in the animator at the Sir Francis Drake. I would appreciate it if you would also have two more made up to advertise my own business, worded as below.

Direct-U-Systems
of Northern California

R. H. Bergen
Manager

Telephone
Yukon 0820

This electric directory
is operated by this Hotel
cooperating with
Direct-U-Systems
of Northern California
for the convenience of
its guests.

(Testimony of Ralph H. Bergen.)

Early in the month I requested that the Los Angeles office follow up three prospects for us who recommended that we see their Los Angeles connections, namely, Earl C. Anthony, T.W.A. and Hertz Drive-Ur-Self. We have not as yet received any final communication concerning them and we are wondering if it would be wise to contact them again.

Yesterday I replied to your letter concerning a new map for the Sir Francis Drake board in which I suggested showing a portion of the Beach Section of San Francisco. I am enclosing a map in which I have marked out those sections which I would like to have shown. With your greater experience in drawing these maps you may have some suggestions for improvement which I would be very glad to hear.

With best wishes, I am

Sincerely yours,

R. H. Bergen.

RHB/s

A Merry Christmas to you, Mr. Marshall, and all the organization.—R. H. B.

(Cut)

Our Direct-U-Systems Direct Buying Dollars to
You and Tell Your Message

[Endorsed]: Filed 9/23/42.

(Testimony of Ralph H. Bergen.)

DEFENDANT'S EXHIBIT LL

R. H. Bergen
Manager

YUkon 0820

Direct-U-Systems of Northern California
Franchise Owner
Direct-U-Systems
105 Montgomery St.
San Francisco, California

December 18, 1940.

Mr. C. W. Talbott
7225 Beverly Blvd.
Los Angeles, California

Dear Mr. Talbott:

I am just in receipt of your letter of December 17th, for which I am very thankful. I am glad to note that you are agreeable to changing the map on the Sir Francis Drake board. I would suggest, however, that you do not start work on it immediately. I believe that the same map can be used for all of the hotels in San Francisco, and if so, we want to be very sure it is right.

It may be desirable to reduce somewhat the area that I showed as desirable on the map I sent to you by cutting off the Embarcadero, and then showing on the opposite side of the map on a reduced scale a narrow strip of the San Francisco Beach area, as there are a number of spots of interest out that way. If you will advise me if that is possible

(Testimony of Ralph H. Bergen.)

I will then, ~~perhaps~~ as carefully as possible, show the precise areas that I wish to have shown.

With kindest personal regards, I am

Sincerely yours,

R. H. BERGEN.

RHB/s

(Cut)

Our Direct-U-Systems Direct Buying Dollars to
You and Tell Your Message

[Endorsed]: Filed 9/23/42.

DEFENDANT'S EXHIBIT MM

R. H. Bergen
Manager

YUkon 0820

Direct-U-Systems of Northern California
Franchise Owner
Direct-U-Systems
105 Montgomery St.
San Francisco, California

December 10, 1940.

Direct-U-Systems
7225 Beverly Blvd.
Los Angeles, California

Dear Mr. Talbot:

I am just in receipt of your letter of the 9th answering mine of the 7th, and I want to thank you

(Testimony of Ralph H. Bergen.)

very much for it. Your letter sets at rest all the disturbance of mind caused by Mr. Belling.

I am also glad to note your comments about the contacts made with T.W.A. and Earl C. Anthony. We shall wait anxiously for further word on them. There is one more such request that has been made of us. That is by the Hertz Driv Ur Self. Will you please have some one contact them with reference to placing their name on the Sir Francis Drake board.

We have at last broken the ice and sold one space on the Drake board with prospect of the same party taking space on two other boards, when and if.

Thank you again for your good letter.

With kindest regards,

R. H. BERGEN.

RHB/s.

(Cut)

Our Direct-U-Systems Direct Buying Dollars to
You and Tell Your Message

[Endorsed]: Filed 9/23/42.

(Testimony of Ralph H. Bergen.)

DEFENDANT'S EXHIBIT NN

R. H. Bergen

YUkon 0820

Manager

Direct-U-Systems of Northern California

Franchise Owner

Direct-U-Systems

105 Montgomery St.

San Francisco, California

November 27, 1940.

Direct-U-Systems

7225 Beverly Blvd.

Los Angeles, California

Attention Mr. Marshall

Dear Mr. Marshall:

Mr. Waldear has this date called on Earl C. Anthony, Packard dealers for this city, and found their reaction to be most favorable but they are not authorized to make any commitments without the approval of the Los Angeles office.

Will you please have one of our representatives call on Mr. Colin Reynolds of the Earl C. Anthony Company in Los Angeles at an early date to secure the necessary approval.

Yours very truly,

R. H. BERGEN.

RHB/s

(Cut)

Our Direct-U-Systems Direct Buying Dollars to

You and Tell Your Message

[Endorsed]: Filed 9/23/42.

(Testimony of Ralph H. Bergen.)

DEFENDANT'S EXHIBIT OO

R. H. Bergen
Manager

YUkon 0820

Direct-U-Systems of Northern California
Franchise Owner
Direct-U-Systems
105 Montgomery St.
San Francisco, California

November 30, 1940.

Direct-U-Systems
7225 Beverly Blvd.
Los Angeles, California

Attention: Mr. Marshall

Dear Mr. Marshall:

Thank you very much for your letter of November 29th.

I note that you have written to the managements of the St. Francis and Palace Hotels. You stated copies of those letters would be included with yours of the 29th, but they were not. Will you kindly forward to me copies of those letters?

Yesterday I received the sheets of statistics on the Sir Francis Drake Hotel. When I telephoned to your office earlier this week, I did so and reversed the charges because I felt that an error had been made for the El Cortez Hotel. Since receiving these figures for the Sir Francis Drake, I still can not believe either set of figures is correct. Perhaps

(Testimony of Ralph H. Bergen.)

I do not understand how they are compiled and if so an explanation would assist me. My reason for believing that they are in error is this: the Sir Francis Drake Hotel has 600 rooms and the figures show 448,000 person days for that hotel, 448,000 divided by 600 and that divided by 365, gives 2.05 persons per room per day, 365 days per year 100% occupancy. The El Cortez Hotel has 325 rooms. The figures for this hotel show 260,062 person days, this figure divided by 325 and again by 365 gives 2.2 persons per room, 365 days per year, 100% occupancy. These figures are obviously impossible. So again I would say if I misunderstood these figures, please correct me.

I note with satisfaction that you are sending to me an additional supply of the small photographs to be used on prospect letters. Unfortunately I found after Mr. Bryant had left, the list which he made up from the Classified telephone directory included many names which are of no value. Some of them are 6th and 7th floor small shops and others are too far away from the Sir Francis Drake to be of any value.

I note you commented in regard to the method of handling the Sir Francis Drake Board. That is all right if the electrician at that hotel is competent to make the necessary installations. We have contacted him and find that he is a man who stutters very badly and quite slow mentally and he also claims that the company owes him \$5 for replacement of lights which he has already done. Of course

(Testimony of Ralph H. Bergen.)

I know nothing of the arrangements that have been made with this man and consequently I am not in a position to even discuss it with this man.

You have misunderstood my question in regard to liability. My question was this; if a guest of the hotel should make use of the board and be directed, we will say for illustration, to a beauty parlor and at that beauty parlor this guest had her hair ruined by accident, could that guest bring suit for damages against either the Franchise Owner or the Company?

We will follow your suggestion in regard to the advertising agency for Dean Witter Monday morning.

Our experience in our first week of solicitation has been mixed. Most every high-grade place of business that we have contacted has given us attention and they have been interested. Our letter has served its purpose well and has not been thrown in the waste basket. However, we have not as yet secured a single contract. We find for one thing that most business houses state positively that they cannot do anything until after the 1st of the year. They are either too busy with the Christmas season approaching or their budgets for this year have been used up.

I am also finding that one of the salesmen whom Mr. Bryant and I selected is proving to be "no good", he has had wide contact in the past in advertising work with all of the "night spots" and

(Testimony of Ralph H. Bergen.)

eating places in San Francisco. I am afraid that this contact has been too close, at any rate, he has not reported in here this week, and while I have been able to get him on the telephone a couple of times, I have received no satisfaction from him. I refer to Mr. Burdge, I think I am going to have to get rid of him.

We have a number of prospects who have asked us to call back next week and we hope for more positive results by a week from now.

With kindest personal regards, I am

Yours very truly,

R. H. BERGEN.

RHB/s

(Cut)

Our Direct-U-Systems Direct Buying Dollars to
You and Tell Your Message

[Endorsed]: Filed 9/23/42.

The Court:

“Do you wish to read any portion of these to the jury?”

Mr. Stoddard:

“Not at this time.”

(P. 292)

The only two defendants I had any dealings with were Mr. Marshall and Mr. Talbott.

H. R. BROWNE

called as a witness on behalf of the Government testified as follows:

I reside in Oakland, California and was living there in July, 1938, and there I met the defendant Martinus. He explained the Direct-U-Systems cabinet to me. (P. 297) He referred to installations in different hotels. (p. 298). And said if I had ten advertising boards I ought to clear \$7,000 here. The territory around San Francisco was discussed as my territory. I gave them \$1500 all of which in 1939 I got back. When I got my cabinet for the Plaza Hotel in San Francisco it was top heavy and there were other mechanical imperfections and I did not try to get any other cabinets after that. (p. 303). The defendant Martinus told me the equipment would function properly. He told me he thought everything was satisfactory and he felt it would be a good investment. Although the Board I had was unsatisfactory (p. 309) I did not demand another board. Just demanded my money back and eventually got it. [54]

E. M. SCHUTT

called as a witness on behalf of the Government testified as follows:

I reside in Cleveland, Ohio, and after reading an ad appearing in the paper was contacted by a man named Morgan and offered a position of resident

(Testimony of E. M. Schutt.)

manager in a business with profits from \$6500 up and an investment of \$1500 fully secured. He had a demonstrator cabinet with him and he told me patents were pending and I gave him a certified check for \$1500. Although I discovered there had been a somewhat similar machine called the Robot Mat Company, Mr. Morgan and I learned of this company through the Better Business Bureau. (Tr. p. 316) I was told by Mr. Morgan that it was then out of business. I had an agreement (Government's Exhibit 44) part of which read:

“Lessor shall cooperate and assist lessee in securing five location leases; hire and train salesmen and render all additional assistance practicable.”

I went around with Mr. Morgan trying to get leases in various hotels but we didn't get any. He finally got one on the New Amsterdam Hotel but I told him that would not be of any value because it was a residential hotel. He got some leases but they were not of much value. (P. 321.) Prior to the time I gave Mr. Morgan the \$1500, he had told me that the company was thoroughly reliable and could meet all obligations and had been doing business for a long time. (Tr. p. 328.) Mr. Morgan said the company was thoroughly reliable and I believed the representations that he made. I did not sell any advertisements but I tried for only a week. I wrote a letter to the company (Exhibit 46) complaining about my difficulties. (p. 325)

(Testimony of E. M. Schutt.)

“You don’t seem to get the picture here at all. In the first place when we were discussing the possibility of my taking over this [55] franchise you painted the picture to both Mrs. Schutt and myself that this was something entirely new, that while possibly later on, a year or so, competition might enter the field, yet at the present time there was nothing like it on the market. If that would have been true then the proposition would have been a good one, because I would have been able to have gotten a foothold with this particular medium of advertising, but instead of this being so a foothold has already been established by this other company.

“You say that that is their worry, not mine, as the Direct-U-Systems will prosecute any infringements on the patents. I am afraid you haven’t visualized the setup here. Just supposing that the Direct-U-Systems are ready and willing to prosecute any infringements. That would take a long time going through the courts and in the meantime do you suppose any hotel or merchant is going to be involved in anything that is being tied up in litigation. Furthermore the present owner of the franchise for eastern Ohio with Robot Map Service Co. has on hand hotel leases with four or five of the downtown hotels. It doesn’t matter that the lease isn’t an exclusive one. The hotels will not enter into any other agreement while still being tied up with some other company. You found that to be true with Mr. Riley at the Allerton. I have since talked with Mr. Riley and he says that they would not do any-

(Testimony of E. M. Schutt.)

thing until released from the contract they are now holding and the man here who holds the lease from [56] the Allerton absolutely refuses to give up this lease. In other words, regardless of who really holds the patents on the board and who is right, we are definitely tied up as far as getting worth while hotel leases.

“After the salesman had been in my office and had told me about this other company and after you had arrived in Cleveland and I had asked you about it, you gave me the impression that there had been such a company but that they had gone out of business some time ago, at least a year or more ago. As a matter of fact I find that the man here signed up for his franchise last October just a month before I signed up and that the Allerton lease was as of November 1939 and not November 1938.

“For your information let me explain that the man who holds the other lease and his attorney did not get in touch with me in a belligerent manner at all. Better Business sent him up here to see me and he came to see what it was all about and how come. Every time I took up the matter with you it seemed to me that you were somewhat evasive and to this day I don't know the real setup. You tell me that Direct-U-Systems control all the patents and yet if this is so how is it that another company can be out on the road at this time selling the identical same thing?”

I received an answer. (Plaintiff's Exhibit 47)
“We are at a loss to understand why you should let the Robot or any other competitor make you feel

(Testimony of E. M. Schutt.)

that you have no chance, for there is no question that our equipment is superior in many ways, and [57] we have advantages and features that none other have.

“Apparently the franchise operator for the Robot has made a complete failure and realizes that you are able to become real competition to him and do a job that he has apparently failed to make good on, and this is the reason that he has been attempting to discourage you.

“As we wired you and wrote you, if anyone interferes with your operations or attempts to embarrass you to the extent that it is detrimental to your operations, we feel that you would be within our rights to assure them that they had better be able to take care of a substantial damage suit, for this is most certainly what would be brought about.

“You have a lease on the New Amsterdam and we would suggest that you complete the selling on this cabinet first, before worrying about leases on other hotels, for as we have advised you, you will have no difficulty in getting all the leases that you want after you have shown the hotel men that you can and will put it over.

(Skipping) “As far as competition, we know that competition is the life of business and you most certainly should not let this get you down, as we are at the present time building an installation which goes into Washington. The franchise operator there ran into a competitive operation, with the natural

(Testimony of E. M. Schutt.)

result that after the competitor's salesmen viewed our equipment, they immediately made application to go to work for the Direct-U- [58] Systems' representatives, and very freely stated that our service offered more than they were able to give, and consequently they were interested in making this change.

(Skipping) Page 3. "You can readily appreciate that when they secure on such hotels as the Detroit Leland and the Fort Shelby Hotel, which have an unusually high standard among hotels, that the hotels in Cleveland will very rapidly fall into line. We would strongly suggest that you proceed with the New Amsterdam and by the time you have it completed, you will find that your trouble making competitor has died the death that usually occurs to men who are interested in creating trouble instead of proceeding with their work."

I wrote the following letter you show me under date of February 7, 1940 (Defendant's Exhibit 48) "Attention Mr. C. W. Talbott:

"Your letter of January 30th, and my letter of the same date crossed in the mails. I have been waiting each day expecting a reply to my letter, but up to the present time I have not received any.

"I was particularly anxious to receive from you a definite detailed report as to affiliations, if any, between Direct - U - Systems, National Directory Systems and Robot Map Service. Also whether or not Robot Map Service was still in existence, and if not, who had taken them over. Also how two com-

(Testimony of E. M. Schutt.)

panies from the same city could be operating practically the same type of board. [59]

“I am now making a formal request that you re-purchase from me my present franchise at fifteen hundred dollars. I contend that in the first place the matter was misrepresented to me in the presence of witnesses in stating that this board was absolutely a new thing in this part of the country, that there was not nor had there been before, anything like it. I contend further that your representative, Mr. Morgan, by not securing the five hotel leases as promised verbally in the presence of witnesses, including my attorney, and also specifying the same in my contract, broke the contract, and, therefore, as the representative of Direct-U-Systems legally voided the contract, as far as Direct-U-Systems is concerned, and if I choose to hold that interpretation.

“In your letter of January 30th in Paragraph 8 you say that you did not agree to any specific number of hotels, and suggest that I re-read my contract. May I suggest that you re-read the copy of my contract which does specifically number five hotel leases, and was included in the contract in the presence of Mr. Morgan, my attorney and myself. Mr. Morgan did not secure these specified leases.”

Signed E. M. SCHUTT.

In reply to this letter I received the letter you show me (Government's Exhibit 49), as follows:

(Testimony of E. M. Schutt.)

“We are extremely sorry that you are having so much difficulty in getting started, and we feel that you are letting some implications get you unduly worried. As far as anyone having identical equip- [60] ment to ours, including the rotating machine, we would appreciate your sending us the information on to us as we have never run into it. It is possible, of course, for someone to reproduce an electric directory, but they are not comparable in the value that is rendered to the merchant. We have run into definite cases where the salesman of the competitor wanted to quit and work on our proposition because they could see the many advantages.”

Skipping.

“In reference to the National Directories System, we have very carefully investigated their connection with the Robot Map Service, and the president of the Robot Map secured the control of the National Directory System a couple of years ago. We know that they are constantly being tied in with lawsuits on the National Directories setup, and that they are one and the same company. Of course, we have no information as to the truth of these assertions, and there is no way we can secure this information for you.

“We did have some information a month or so ago that the salesman of the Robot Company had quit, and they were ready to fold up; but again, we are not in a position to substantiate these facts other than we can say it is hearsay.

(Testimony of E. M. Schutt.)

“The Direct-U-Systems, nor any of its officers, have any connection with the National Directories or the Robot Map Service.

“Several years ago the writer did have a financial interest in the National Directories, but [61] sold all of his holdings in March, 1938, to Mr. Young, who is the president of the Robot Map Service.

“Outside of this, there is no other information we can give you with the exception that the Direct-U-Systems has exclusive features that no other company has, and also that the company operates on an extremely ethical basis.”

Signed DIRECT-U-SYSTEMS,

By C. W. TALBOTT.

I wrote the letter you show me (Defendant's Exhibit 50) dated February 14, 1940 to Mr. Talbott where I accused the company of definite misrepresentations (P. 336, 339) and requested the return of my \$1500. I never got any return of my money but I did go to California to the office of the Company and told them who I was and Mr. Talbott came in and he introduced me to a Mr. Painter whom I now recognize as Mr. Marshall. (P. 342) Mr. Talbott said it was apparent Mr. Marshall had misrepresented things to us and that he was not authorized to do this but that they would arrange to repay our \$1500 as soon as the Board met, so we went on back and Mr. Talbott said to me he would give me his word of honor that it would

(Testimony of E. M. Schutt.)

be settled to my satisfaction in thirty days but I never got any money back at all.

Cross Examination

By Mr. Stoddard:

Mr. Morgan told me there were other installations of the Direct-U-Systems throughout the country but that there were none in Cleveland and I never did learn that there had been any other installations by any other company in Cleveland. The only effort I made toward selling any advertising was in connection with the New Amsterdam Hotel. When the contract was drawn up I went to my attorney. (P. 352) The reason I didn't go any further in securing loca- [62] tions was that I was called up by an attorney who represented the Robot people and told me not to go any further. Some time elapsed in correspondence trying to find out, because it was represented to me there was nothing of its kind on the market, and I wanted it straightened out, and then I got some very evasive letters and answers, and then I finally demanded my money. (Tr. p. 355, lines 10 to 14.) It is true that the Direct-U-Systems offered me an agreement to let someone else take over my territory but I never went ahead with that for the reason that it was too indefinite. It was if and when: if they were able to sell the contract and when the machines did any business. (Tr. p. 357, lines 3 to 6.)

RALPH A. BURKE,

called as a witness on behalf of the Government, testified as follows:

I live in Oakland and saw an ad in the paper concerning the Direct-U-Systems and received a call from Mr. Martinez who wanted to know what my business experience had been and I told him I had been in the shoe business all my life and was looking for a connection and he said I was the right man for their company as they wanted a resident manager who could act as supervisor of the sales crew. I asked him, first of all, what protection would I have if I went in this thing. He told me there was nothing in the market like it, that it was completely patented, that it was brand new and had never been tried in San Francisco. (Tr. p. 367, lines 12 to 15.) He did some figuring and thought I would make at least \$6500 a year. I asked him why they were not rated in Dunn and Bradstreet. He said they were a very big concern; they bought everything for cash and had no reason to have a rating. He told me he did not receive any commission on the money I put up but it was held in trust and if the franchise holder fell down on the job, the money would be returned to me. I paid them a total of \$1500 and I did so on the strength of representations Martinez made to me. I did not receive any cabinet but I didn't ask for any. (P. 371) I had salesmen working for me [63] for about one month. I sent the crew out and relied upon what Mr. Martinez had told

(Testimony of Ralph A. Burke.)

me and I received a letter dated April 26, 1939 (Government's Exhibit 53). There has never been any attempt to state that the directory system is patented in all details, but we do have an exclusive on the revolving cards which we have the patents pending on. It is impossible to cover all of the directory features in patents as there is nothing basically patentable on this type of equipment with the exception of design patents, but the revolving equipment that we have is patentable. (Skipping) We have seen one or two people who have attempted to start in competition and we have seen them fold up due to their inability to build the type of equipment or render the service that we do. (Tr. p. 377, line 16, to line 5, p. 378.)

I received the following letter (Government's Exhibit 55) written by Mr. Talbott and dated May 25, 1939:

"Relative to the advertisement. We can see no reason why your income should not exceed the amount we set forth in our advertisement for this would require only installation of a very small percentage of the potential locations in your territory.

"These installations can be shipped to you as quickly as you furnish us the necessary information, such as the listings, etc. to complete them.

"This is not a promotional matter, and we most certainly have nothing to sell you, as we do not under any condition, sell you any equipment. All of our equipment is leased on a yearly basis, of which you were well aware of the conditions.

(Testimony of Ralph A. Burke.)

“We are, however, extremely interested in [64] the development of that territory, and if you are interested in disposing of your franchise, we will be only too happy to work out some arrangement to assist you. We will, upon advice from you, endeavor to work out a repurchase agreement, having in mind that it is possible to secure someone who would have the ability to properly develop that territory.”

My salesmen brought in six contracts altogether but when I learned that the article was not patented and that people had been trying to sell it there previously I asked them to give me back my money and I did get \$500 back and they executed a repurchase agreement with me. I did see Mr. Marshall in San Francisco who told me his father used to be a close friend of Mr. Talbott while he, Mr. Marshall, did not have any connection with the Direct-U-Systems. I had told Mr. Talbott I would try to make a settlement of my case so we discussed the proposition and Mr. Marshall said he would take it up with Mr. Talbott. Mr. Marshall told me he would come up personally and build a cabinet and install it at his own expense at San Francisco and that he would sell it for me at that time. I did write a letter, however, wherein I stated I thought the franchise could be advertised for sale on a basis of \$7500 out of which I could get my money and we felt it could be sold on a basis of \$750 for each of ten installations. (Tr. p. 388.)

(Testimony of Ralph A. Burke.)

Cross Examination

By Mr. Stoddard:

(P. 390) I did not try to do any selling myself. I finally agreed to sign a re-purchase agreement wherein I was to receive \$500 from the first money received from the re-sale of the territory, and the balance of \$1000 out of the 20 per cent of royalties. That amount was modified by telephone conversation with Mr. Marshall and later I confirmed it by letter. (Tr. p. 394.)

T. E. MORGAN

called as a witness on behalf of the [65] Government, testified as follows:

I live in Los Angeles and became acquainted with Mr. Marshall and Mr. Talbott by answering an ad relative to the Direct-U-Systems. (P. 400) I made an appointment with Mr. Marshall and called upon him. The plan was explained to me. I was very much interested and I asked if the equipment was patented. Mr. Marshall said the essential features were patented but generally they had patents pending. I was told that the territory I was to have was virgin territory. (P. 402) I was given a kit and a model of the cabinet and given pictures as to where the machines were in operation in the Multnomah Hotel, Hotel Washington, the Plaza in San Francisco. I was furnished

(Testimony of T. E. Morgan.)

with an outline of sales talk, containing in substance the same material as this one, marked Government's Exhibit No. 25. (Tr. pp. 185-194.) My original contract was that I was to receive 25% commission. I signed this with Mr. Talbott. I had an outline of my sales talk. I did represent to Mr. Schutt that this had never been tried before. I did procure for Mr. Schutt five hotel locations.

Cross Examination

By Mr. Stoddard:

(Three letters were identified and marked for identification but not received in evidence.)

A. M. GONZALES,

called as a witness on behalf of the Government testified as follows:

In 1936 I met Mr. Martinez in Seattle and purchased the State rights in Washington for the National Directory Systems. We made some sales but the board was not installed in a Washington hotel because it proved to be defective. Different parts of the board would go out of order. (P. 412) I never met Mr. Kane with whom I corresponded. I had a picture of that board taken at the request of the company. I sent them a copy.

IVAN SMITH,

called as a witness for and on behalf of the Government, testified as follows: [66]

I live in Portland, Oregon and met Mr. Martinez, one of the defendants, in 1937 and in 1938 installed a directory at the Multnomah Hotel. It did not operate very good at any time. (P. 418) I do not know what finally became of it.

L. C. WHITNEY

called as a witness on behalf of the Government, testified as follows:

I live in San Leandro, Alameda, California. As a result of an ad which I saw in the paper, I met Mr. Marshall in February of 1939. The ad was similar to the ones I have heard read here. (Tr. p. 420.) He introduced me to a man by the name of Wall whom he said had the San Francisco area and thought we should get acquainted. I was shown some letters (Government's Exhibits 58 and 59, respectively) indicating that machines were operating successfully in Portland, Oregon.

(Testimony of L. C. Whitney.)

GOVERNMENT'S EXHIBIT No. 58

Member

American Hotel Association

United States Chamber of Commerce

Hotel Multnomah

Earl McInnes, Manager

Wm. J. Hofmann Associate Manager

Fourth and Pine

Portland, Oregon

July 22, 1938

Mr. A. Kane

Pioneer Building

Los Angeles, California

Dear Mr. Kane:

Replying to your letter of July 19.

The Electric City Directory, to which you refer, has been in our lobby for several months, and seems to function in good order and attract considerable attention.

If we may be of further assistance to you, please do not hesitate to call upon us.

With best wishes, we are

Very truly yours,

HOTEL MULTNOMAH

EARL McINNES

Earl McInnes, Manager

McI:RD

[Endorsed]: Filed Sept. 23, 1942.

(Testimony of L. C. Whitney.)

GOVERNMENT'S EXHIBIT No. 59

H. E. Dupar, Mgr.

New Washington Hotel
Seattle

July 25, 1938

Mr. A. Kane

Pioneer Building

Los Angeles, California

Dear Mr. Kane:

In response to your inquiry, we are glad to say that the electric city directory which has been installed in our lobby is proving to be very satisfactory. Except for one short time, due to a defective battery, it has been functioning perfectly.

It seems to arouse a good deal of interest and we feel that the advertisers are receiving value for their money.

Sincerely,

F. B. McCLURE

Frank B. McClure

Assistant Manager

[Endorsed]: Filed Sept. 23, 1942.

I told Mr. Marshall I had been connected with the banking business for twenty-five years and had never done any advertising sales work. Mr. Marshall said they were attempting to put these

(Testimony of L. C. Whitney.)

machines in San Francisco and California for the first time and told me there would be no competition. He gave me figures at that time whereby if I operate ten of the systems I would be able to net myself in the neighborhood of \$7000, somewhat over \$7000, but that would be net with the fact that I was to hire a sales manager inasmuch as I told him I had never done any advertising sales work. (Tr. p. 424) I paid \$1500 for my contract. At the time I paid him the money I relied upon the representation he had made. I would not have paid the money if I had not relied upon the representation made. I did not get a cabinet but I didn't ever try to get one. I wrote the company and told them in February, 1939 that I was having difficulties with getting leases from hotels. (P. 439) I told them that unless they could supply the leases to me as I understood they would I could not let the sales force work but I got one contract only and that from the California Hotel. On March 8th, 1939 I addressed a letter to the Direct-U-Systems [67] (Government's Exhibit No. 62), portions of which are as follows:

"It was my understanding with Mr. Marshall when I agreed to your contract that you were to secure the leases from the various hotels. When he left here last week he assured me that the ones listed had all agreed to sign. Since getting your letter, I have contacted all the managers but have had no success in getting anywhere. The best

(Testimony of L. C. Whitney.)

statement any would give me was that they would look into it.

"It also appears that you will find trouble because of the Hotel Oakland lease. Mr. Gillum told me that he wa to talk it over with the Hotel Oakland and if he notices that they got ten per cent he won't sign.

"It was my understanding the leases were to be supplied by you, since you were to have them in your name and I was merely to lease them from you. It appears that the Hotel Oakland is the only one on my list that you have signed up and that is not in accordance with the lease terms. It appears the hotels all check in with the Oakland. Unless you can supply me with the leases, I cannot let the sales force work."

I wrote under date of March 22, 1939 and told the company that since I was not getting the leases, I would have to put the proposition to someone to buy out my interest. I had considerable correspondence with the defendants concerning a re-purchase agreement and on May 4th, 1939, wrote the following letter:

"It appears from your agreement that you want to operate here on my deposit and repay me only from the profits therefrom. A letter of Mr. Marshall [68] to Mr. White also seems to substantiate this. If you were to sell my franchise to another for \$1,500 I cannot see why I should wait for payment from his profits to you, as Mr. Marshall was here in connection with San Francisco at the same

(Testimony of L. C. Whitney.)

time. I do not see that all his expense should be charged to me.

“In connection with your repurchase, I am willing to sell for \$1,300 cash if closed in ten days, or will sign upon payment of \$500, and to receive \$500 upon your selling to another if within 60 days, and the \$500 balance when the board is installed in Oakland. This last is because you seem to see that I am repaid in full.

“Yours very truly, WHITBY.”

(Government's Exhibit No. 68, Tr. p. 436.)

I did receive a repurchase agreement from the company and did receive \$375 on that which I agreed to accept. (P. 439).

MYRTLE SCHUTT,

called as a witness on behalf of the Government, testified as follows:

I was present when my husband talked to Mr. Marshall and Mr. Talbott in Los Angeles. Mr. Talbott said he wanted us to meet our sales manager and introduced Mr. Marshall as Mr. Painter. My husband told them that he was dissatisfied with the representations made to him in Cleveland and wanted his \$1500 back. I never saw Mr. Painter again. When we left we were told we would hear from them in thirty days. Mr. Schutt made it clear that he wanted nothing further to do with the situation.

CECIL I. McREYNOLDS,

called as a witness on behalf of the Government,
testified as follows:

I live in Tucson, Arizona, but in October of 1939 I was in Washington, D. C. and saw an ad from the Direct-U-Systems of Los Angeles, California and had a conference with a Mr. MacNeil [69] who represented the Direct-U-Systems. He told me it was an old established company of high financial standing and that the men representing it were well and favorably known on the West Coast. I was told the machine was protected by patents and that a patent was pending. There was some discussion of a competing company which was called the Robot Map but I was told we would have no trouble with it as it was so much inferior to the Direct-U-Systems. We subsequently signed an agreement on October 6. This is the agreement I signed (Exhibit 72) and I gave Mr. MacNeil \$1500.

GOVERNMENT'S EXHIBIT No. 72

Date Rec'd. 10-9-39 Ackngd. 10-9-39

Remittance 1500.00 Eqpt. Ordered ----

Franch. Card Made 10-10-39 Comm. Ent'd....

Agreement.

This Agreement, entered into this 6th day of October, 1939, by and between the Direct-U-Systems, a corporation, with general offices at Los Angeles, California, hereinafter referred to as the Lessor, and Cecil I. McReynolds, of Washington, District

(Testimony of Cecil I. McReynolds.)

Government's Exhibit No. 72—(Continued)
of Columbia, hereinafter designated as the Lessee,

Now, Therefore, in consideration of the premises and the mutual promises of the parties hereto, and the consideration passing and to pass from each other to other, it is agreed as follows:

The Lessor hereby grants to the Lessee the exclusive right to use and operate the Lessor's Direct-U-Systems in the following described territory, to-wit:

The District of Columbia, including all of the city of Washington; and the cities of Annapolis, Frederick, and Cumberland, all in the State of Maryland; and the cities of Alexandria and Fredericksburgh, in the State of Virginia.

on the following terms and conditions:

Whereas, the territory above described is at this time subject to an attempt to develop the same by a competing organization known as Robot-Map and it is the desire of the parties hereto to provide for contingencies arising from said competitive situation which may affect the operations of the Lessee and Lessor in said territory in an abnormal manner,

It Is Agreed that the term of this agreement shall be as follows: First, a preliminary period ending on December 31, 1939; Second, an effective period of three years from January 1, 1940; and Third, an additional period of five years from and after January 1, 1943, on the following express terms and conditions:

(Testimony of Cecil I. McReynolds.)

Government's Exhibit No. 72—(Continued)

A. The said Lessee shall immediately devote his whole time and efforts to the development of said territory in a manner satisfactory to both parties hereto, and is authorized hereby to sign up locations for said Direct-U-Systems, subject to the approval of Lessor, and to sign up listings in the said Direct-U-Systems on the terms and conditions established by Lessor and hereinafter contained.

B. On or before the said 31st day of December, 1939, the Lessee agrees to complete the first two boards or machines hereinafter provided for, and to complete and thereby make this agreement fully effective and in full force and effect, Providing, that in the interim between the date of this agreement and the said 31st day of December, 1939, there shall not have occurred in said territory any abnormal happening or event which in the judgment of the parties hereto shall or may reasonably prevent, impede or handicap the development of said territory to the satisfaction of the parties hereto, of a nature arising out of said competitive situation; or from litigation which may be filed or be pending in said interim of time, or from any other abnormal cause which may affect, impede or handicap the operation of the parties hereto, under this agreement and in said territory, to an extent according to their mutual judgment and opinion which may make the further operation of this agreement undesirable or difficult.

C. In the event no such happening or develop-

(Testimony of Cecil I. McReynolds.)

Government's Exhibit No. 72—(Continued)

ment occurs, an order for the first two cabinets or machines hereunder shall become final and fully effective on or before said December 31, 1939; but if such happening or development does or should occur in said interim of time, prior to the time the said two installations are or shall have been made (but not otherwise) then, even if one installation shall have been made (but not two) the Lessor shall repay and refund to Lessee the sum of fifteen hundred dollars which is deposited with Lessor at the time of the execution of this agreement, whereupon Lessor shall take over any installation which shall have been made and may operate the same for its own use and benefit, and shall receive the benefit of any location rental, salesmens' commissions and display cards and other equipment on hand, and shall receive the balance in full of all moneys theretofore collected by Lessee or his representatives or under his direction; and neither party shall claim from the other any amount or compensation for efforts made or work done, otherwise; and the Lessor shall be free to dispose of the said franchise and territory as it may desire.

D. In the event the said Lessee shall make final and effective an order for the first two cabinets or machines, on or before December 31, 1939, then the effective period of this agreement shall commence to run on January 1, 1940, and shall continue for three years thereafter; Provided, however, that if during the calendar year of 1940 Lessee shall

(Testimony of Cecil I. McReynolds.)

Government's Exhibit No. 72—(Continued)

give a definite order for, or if he shall pay for, three additional cabinets or machines, making a total of five (5), then Lessee shall have a firm option for the renewal of this agreement for an additional period of five years from and after January 1, 1943, on the same terms and conditions.

The further terms and conditions of this agreement are as follows:

(1) The lease rental on the 60 space Direct-U-Systems shall be \$750.00 each, and on the 40 space systems the lease rental shall be \$500.00 each for the first year, payable upon installation and collection.

(2) The second and succeeding years each 60 space system shall be \$250.00 per year, and \$166.67 for 40 space Direct-U-Systems, payable upon installation and collection.

(3) The sum of fifteen hundred dollars (\$1500.00) shall be deposited by Lessee with Lessor upon the signing of this agreement, subject to the terms and conditions hereinbefore written, and said payment of \$1500.00 represents payment of the lease rental on the first two systems, hereby leased by Lessee from Lessor, to be delivered on demand, subject to the terms and conditions of this agreement.

(4) Lessee agrees to pay Lessor ten per cent (10%) royalty in addition to the lease rental above set forth, payable upon installation and collection.

(5) In addition to the above lease rentals and royalties, the Lessee shall pay to the Lessor the sum of fifty cents (50c) for each advertising card

(Testimony of Cecil I. McReynolds.)

Government's Exhibit No. 72—(Continued)

furnished for the Lessee's subscribers each month, if desired by Lessee, in which case the Lessee agrees to furnish, not later than the 10th of each month, individual copy for the advertising cards to be used for the following month, otherwise the Lessor shall be relieved from the responsibility of furnishing the same.

(6) Lessor agrees to furnish and install, at its own expense, each system complete and in good working order, and to maintain the same, complete and in good working order, at its own expense during the life of this agreement.

(7) Lessee shall have the use and benefit of the leases of locations made by hotels and depots, and shall pay lease rental direct to location Lessor in the above designated territory, and it is agreed that all leases shall be made in the name of the Lessor and must be approved by the Lessor.

(8) Lessor agrees to cooperate with and assist the Lessee in securing location leases, hiring and training salesmen, and to render all additional assistance practicable and reasonable in view of the nature of the operations contemplated hereby, without charge to Lessee for such assistance; and Lessor shall loan sales equipment to Lessee as per list attached.

(9) Lessee shall operate the business in his territory as an independent contractor, and shall in no way obligate the said Lessor. This is not an agency nor partnership.

(Testimony of Cecil I. McReynolds.)

Government's Exhibit No. 72—(Continued)

(10) All advertising space shall not be sold for less than \$5.00 per listing per month, unless agreed to by Lessor in writing.

(11) Lessee may if he so desires, arrange for and provide his own service agreements, lease forms, map location cards, letterheads, envelopes and multi-graphed letters, in which case the Lessor agrees to credit to his account and apply such credit on any amount owing from Lessee to Lessor, the equivalent value of such material, and in no case less than the amount set opposite the respective items on the attached Equipment list.

It is further understood and provided that if during the life of this agreement there should occur any situation as to manufacture or transportation, whether by War, Act of God, Major Force or otherwise, which for the time being prevents the Lessor from accepting and filling the orders of the Lessee for the Direct-U-Systems which are the subject of this contract, then and in that event the Lessee shall have the option or privilege of manufacturing and installing any of said systems which the Lessor may be unable to deliver, and not otherwise; in which case Lessee shall pay to Lessor the royalty on such systems which is provided for in this agreement, but no lease rental for said systems.

This Agreement supersedes and voids all previous agreements between the parties hereto, and before executing this agreement Lessee has read each provision herein and understands same, and no other

(Testimony of Cecil I. McReynolds.)

Government's Exhibit No. 72—(Continued)
 agreement or representation shall be valid or binding
 on the Lessor; but this does not prevent the modifica-
 tion of or addition to this agreement, hereafter, by
 written agreement between the parties hereto.

In Witness Whereof the parties have affixed their
 signatures the day and year in this instrument first
 above written, the representative of Lessor being
 duly authorized thereto. Executed in duplicate.

DIRECT-U-SYSTEMS, Inc.

By W. W. MacNEILL

Lessor Division Manager

CECIL I. McREYNOLDS

Lessee

Witnesses:

C S WALLACE

**ANTICIPATED INCOME AND EXPENSES LESSEE PRO-
 POSES TO EFFECT, FIRST YEAR, AND SUCCEED-
 ING AS PER STATEMENT BELOW:**

60 spaces:

income, 60 spaces, at \$5.00 per month,	
total for year,	\$3,600.00

Expenditures by franchise operator:

Lease rental to Lessor,	\$ 750.00	
10% royalty to Lessor,	360.00	
10% to hotel,	360.00	
sales expense, not over 20%	720.00	
60 advertising cards each month,		
or 720 per year, at 50 cts. each	360.00	2,550.00
		<hr/>
balance,		1,050.00

(Testimony of Cecil I. McReynolds.)

Government's Exhibit No. 72—(Continued)

Second and following years:

Income as above,		3,600.00
expenditures,		.
lease rental to Lessor,	\$ 250.00	
10% royalty to lessor,	360.00	
10% to hotel,	360.00	
sales expense, not over 20%	720.00	
720 advertising cards at 50 cts.	360.00	2,050.00
		<hr/>
	balance,	1,550.00
•	•	•

Standard 40 space installation:

Income, 40 spaces at \$5.00 per month,		
total for year,		\$2,400.00
expenditures by franchise operator,		
Lease rental to Lessor,	\$ 500.00	
10% royalty to Lessor,	240.00	
10% to hotel,	240.00	
40 advertising cards per month,		
or 480 at 50 cts each,	240.00	1,700.00
		<hr/>
	balance,	700.00

Second and following years:

Income as above,		2,400.00
expenditures,		
Lease rental to Lessor,	166.67	
10% royalty to Lessor,	240.00	
10% to hotel,	240.00	
480 advertising cards at 50 cts.	240.00	1,246.67
		<hr/>
	balance,	1,153.33
•	•	•

24 space installation:

Income, 24 spaces at \$2.50 per month,		
total for year		\$ 720.00
expenditures by franchise operator,		
lease rental to Lessor,	157.00	
10% royalty to lessor,	72.00	
10% to hotel,	72.00	
salesman, 20%	144.00	445.00
		<hr/>
	balance,	275.00

(Testimony of Cecil I. McReynolds.)

Government's Exhibit No. 72—(Continued)

EQUIPMENT LIST.

Direct-U-Systems, Inc. will loan to franchise operator the following equipment: Valued at

- | | |
|--------------------------------------|----|
| 1. 3 Demonstration cabinets. | \$ |
| 2. 3 Illustrated Presentation Books. | \$ |
| 3. 6 Selling Suggestion Circulars. | \$ |

Direct-U-Systems will furnish free to franchise operator, up to

- | | |
|---|----|
| 4. 200 sets Advertisers' Service Agreements, quadruplicate, | \$ |
| 5. 20 sets Hotel Lease forms, triplicate, | \$ |
| 6. Hotel Reminder Cards, as needed, | \$ |
| 7. 200 Advertisers' Map Location Cards, | \$ |
| 8. 200 Letterheads, imprinted with name of franchise operator | \$ |
| 9. 200 envelopes, imprinted same | \$ |
| 10. 200 letters multigraphed on above, filled in with names and addresses of Franchise Operator's prospects, from list furnished by him, with 2¢ stamps attached, shipped to franchise operator to place in mail. | |

Extra equipment, if ordered additional to above, will be shipped COD unless paid for in advance:

Letters as per item 10, letterheads and envelopes printed, letters multigraphed, names and addresses filled in, no postage, per hundred,	\$	5.50
Demonstration cabinets, each,	\$	7.00
Letterheads and envelopes as per items 9 and 10, per sets of 100	\$	2.50
Presentation books, including selling suggestion circulars, each	\$	1.00

EQUIPMENT

Direct-U-Systems will furnish to Franchise Operator the following equipment:

1. 3 Demonstration Cabinets

(Testimony of Cecil I. McReynolds.)

Government's Exhibit No. 72—(Continued)

2. 3 Illustrated Presentation Books

3. 6 Selling Suggestion Circulars

Furnished Free: Up to—

~~4. 200 sets Advertisers' Service Agreements~~
(~~quadruplicate~~) [Written in pencil]: Copy enclosed.

5. 20 sets Hotel Lease Forms (triplicate)

~~6. Hotel Room Reminder Cards (as needed)~~

7. 200 Advertisers' Map Location Cards

~~8. 200 Letterheads Imprinted with name of Franchise Operator~~

~~9. 200 Envelopes Imprinted with name of Franchise Operator~~

~~10. 200 Letters multigraphed on above, filled in with names and addresses of Franchise Operator's prospects, from list furnished by him, with 2c stamps attached Shipped to Franchise Operator to place in mail.~~

Extra Equipment—If ordered additional to above; shipped COD:

Letters as per Item 10, Letterheads and envelopes printed, letters multigraphed, names and addresses filled in, no postage, per hundred,

\$5.50

Demonstration Cabinets, each,

7.00

Letterheads and envelopes per items 9 and 10, per 100 sets

2.50

Presentation Books, including Selling Suggestion Circulars, each—

1.00

[Endorsed]: Filed Sept. 24, 1942.

(Testimony of Cecil I. McReynolds.)

I demanded a return of my money but I never got it. However, I did not order an electric board for installation. I asked for a demonstrator but never sold any advertising space, although I endeavored to do so and employed salesmen for that purpose. I know the money was not held as a deposit but was immediately used. It is true that the organization did attempt to secure leases from hotels and it is correct that it assisted in securing three salesmen and that it assisted at meetings in training and forming sales organizations. (P. 482) And it assisted in compiling adequate lists of prospects and it is true that I wrote "to express my deep appreciation of the very fine assistance given me by Mr. McNeil, a man of high attainments, exceptional personality and loyalty and trustworthiness and it is true that that is my wording" and I did sign the statement that I had received all of the assistance I was supposed to receive.

Cross Examination

By Mr. Peterson: I am an attorney and admitted to practice in California, Arizona and New York. My work is mostly civil and corporation work and I have been in active practice since 1901. (P. 488)

MRS. KATHERINE PHILIPS

called as a witness on behalf of the Government, testified as follows:

I am acquainted with defendants Marshall, Marsh,

(Testimony of Mrs. Katherine Philips.)

Talbott, Fawkes and Martinez. I was employed by Mr. Marshall in September, 1937, and they were all associated with him in the office. [70]

By Mr. Veale:

“Q. You were there several months?”

The Witness:

“A. About six, six and a half, seven months.”

[71]

By Mr. Veale:

Q. “During that time did you have occasion to do stenographic work for Mr. Marshall?”

The Witness:

A. “Yes.

By Mr. Veale:

Q. “Do you recall having heard the name of Mr. A. Kane? A. “Yes, sir.

Q. “Did you ever see Mr. Marshall sign letters which had been typed by you and use the name of “A. Kane.”

By Mr. Peterson:

“That is objected to on the ground it is immaterial to any issue in this case; that the asking of that question is prejudicial to the rights of the defendant; that there is nothing charged in the indictment relative to that that I have ever seen.

By the Court:

“I know we have some letters here that are used by a hotel, that the name of A. Kane is used in, that was used as part of the sales talk. The objection is overruled.

(Testimony of Mrs. Katherine Philips.)

By Mr. Peterson:

“And an exception, please.

By Mr. Veale:

“Have you seen correspondence come into the office of the National Systems while you were employed there addressed to Mr. A. Kane?

The Witness:

“Yes sir. Mr. Marshall dictated letters to me in reply to those letters.

Cross Examination

By Mr. Stoddard:

“I myself have signed the name A. Kane to letters. [72]

The Court:

“I am going to limit it for the purpose of connecting up the exhibits 58 and 59, and for no other purpose. And it doesn't tend to prove or disprove the guilt of the scheme or conspiracy alleged, but except as a connecting link in the use of these letters that have been alleged were used, and it is claimed they were used. * * *’ (P. 493)

HENRY T. BELLING,

called as a witness on behalf of the Government, testified as follows:

I live in Los Angeles and have had dealings with Mr. Marsh, Mr. Marshall and Mr. Talbott. Mr. Marsh called on me and showed me photographs of

(Testimony of Henry T. Belling.)

this apparatus supposed to have been taken in various hotels in the eastern part of the country and a few days later showed me one of the machines in their place of business here in Los Angeles although it had not been completed. I asked about the installation in the Drake Hotel and Mr. Marsh told me that it was very successful and had been operated there for several months. I asked particularly whether or not the advertising spaces as shown on that board or on pictures of the various boards had actually been sold, and I was told that they had. I was told they had numerous installations in the east also and that it was working out very well.

IRA H. ARNOLD

called as a witness on behalf of the Government, testified as follows:

I am Assistant Chief of the Application Division of the United States Patent Office and have made a search of certain designated names of companies from January 1, 1922 to September 1, 1942. I did not find any patent issued under anyone named Norman H. Marshall on a director device. (P. 509) Nor did I find any issued to Chas. W. Talbott, Albert Martinez, A. Kane nor Ray Young nor L. F. Marsh. If a person wants to make an assignment of [73] a patent, it is recorded in the Patent Office, but I did not find any assignment of the National

(Testimony of Ira H. Arnold.)

Directory Systems nor for the Automatic Map Company. (P. 511) I found a patent applied for by one Emmet W. McKenna on September 6, 1935 covering a cabinet "Electrical Directory System." That is the title of the application and it was notarized by N. H. Marshall.

(It was stipulated by counsel that the notarization was by the defendant, Marshall). (P. 513)

A letter was sent to the applicant notifying him of certain defects in the application for the patent. It was rejected October 22, 1935 and became abandoned six months thereafter.

IRA H. ARNOLD

resuming the stand as a witness for the Government testified as follows:

I can identify patent which the Direct-U-Systems acquired by assignment.

"Mr. Stoddard: No. That is a design patent.

Q. By Mr. Stoddard: This is a design patent?

A. Yes.

Q. That has been issued by the patent office?

A. Yes.

The Court: Does that cover this cabinet that is exhibited here?

Mr. Stoddard: It is not our contention that it does.

The Witness: No.

(Testimony of Ira H. Arnold.)

The Court: Then what materiality is it, counsel?

Mr. Stoddard: I will say this for the materiality as to this particular patent; It is a patent which the Direct-U-Systems acquired by assignment.

The Court: You mean this particular patent?

Mr. Stoddard: Yes.

The Court: What would that have to do with this? [74] This is a different design?

Mr. Stoddard: That is right. But as the evidence will show, this is just one of several designs which the company manufactured and put out, depending on the selection of a man who was going to operate it.

I will offer this at this time." (Tr. p. 525.)

ARTHUR K. BARNES

called as a witness on behalf of the Government, testified as follows:

In October, 1940, I was living in Pasadena. I met during that year Mr. Marsh, Mr. Marshall and Mr. Talbott. Mr. Marsh called on me and said he came as a representative of the Direct-U-Systems and explained their proposition to me about putting machines in hotels. Mr. Marsh assured me the company was financially responsible, and I later visited the headquarters of the Direct-U-Systems (P. 533) where I met Mr. Talbott and Mr. Marshall. I told them I had been active in sales management when I was told that this machine was used in some

(Testimony of Arthur K. Barnes.)

of the Brooklyn hotels in New York and in the city of Dayton, Ohio. I asked them the names of operators of various hotels, but they did not give them to me. I asked why they had gone back east to exploit this device; why they had gone so far afield and they said it was in order to demonstrate that it could be operated a long distance from headquarters. I asked if I could investigate the San Francisco situation and talk to the men who had sold the space on the board in the Sir Francis Drake Hotel and Mr. Marshall told me that he had done that himself. I had a further conversation with these men in Mr. Marshall's office and was given a complete selling setup. (P. 540) During these conferences I requested of the defendants a list, a sworn list, of the various hotels, and their locations, where these boards were in operation. I made this request, first, of Mr. Marshall and subsequently of Mr. Talbott, and was furnished such a sworn statement. (Government's [75] Exhibit 74, Tr. 540, 541.)

(Testimony of Arthur K. Barnes.)

GOVERNMENT'S EXHIBIT No. 74

Direct-U-Systems

General Offices

Direct-U Building—7225 Beverly Blvd.

Los Angeles, California

Oct 23, 1940

Mr. Arthur K. Barnes

401 Scott Place

Pasadena, Cal.

Dear Mr. Barnes:

The following is a partial list of the hotels or locations where electric directories have been installed either by this company or by the company that the writer was formerly President. The old company is now inactive and never made equipment comparable to the present having never had the moving card equipment which we have designed solely for Direct-U-Systems.

Multnomah Hotel—Portland Oregon

New Washington—Seattle Washington

Plains Hotel—Cheyenne Wyo.

Hildebrand Hotel Lansing Mich

Blackstone Hotel Fort Worth Texas

Lanier Hotel—San Antonio Texas

Park Motel—San Antonio Texas

Ben Milan—Houston Texas

New Orleans New Orleans La

Newark Athletic Club—Newark N. J.

Columbian Club—Elizabeth N. J.

(Testimony of Arthur K. Barnes.)

Roosevelt Hotel—Pittsburg Pa.

Jefferson Hotel—Virginia

St. Nicholas—Springfield Ill.

Waldorf Astoria—New York City

Park Central Hotel—New York City

Imperial Hotel—New York City

Times Square Hotel— “

Governor Clinton Hotel “

Sir Francis Drake—San Francisco

Detroit Leleand Detroit Mich

Dayton Biltmore—Dayton Ohio.

And many others either installed or in process of construction.

Trusting that this is the information that you desire, we are,

Very truly yours

DIRECT-U-SYSTEMS

By C. W. TALBOTT

President

Allied Member AHA An International Service

State of California,

County of Los Angeles—ss.

On this 23rd day of Oct., 1940, before me, the undersigned, a Notary Public in and for said County, personally appeared C. W. Talbott—President Direct-U-Systems known to me to be the person

(Testimony of Arthur K. Barnes.)
whose name is subscribed to the within instrument,
and acknowledged that he executed the same.

Witness my hand and official seal.

[Seal] N H MARSHALL

Notary Public in and for said County and State.

My Commission Expires June 20, 1942 (1942)

[Endorsed]: Filed Sept. 24, 1942.

I gave them a check for \$1500 to cover the franchise for the territory agreed upon and they gave me salesman kits and advertising matter, and I relied upon the representations they made me. I tried to sell advertising space myself and a lease agreement for the Hotel Hilton was delivered to me but I did not sell any of the advertising space. I asked for a return of my money and made the request to Mr. Talbott. I was tendered a repurchase agreement but did not sign it. I never received any of my money back. (P. 546)

Cross Examination

By Mr. Stoddard:

I took some little time to investigate this proposition and three weeks elapsed during my investigation and I submitted the proposed contract to an attorney. (p. 551) There were three major features wrong with the enterprise. One was that the figures of the amount of business done by the Hilton Hotel were wrong. The second feature was that this had not been exploited in any territory which I had

(Testimony of Arthur K. Barnes.)

taken over but this was not true. People didn't recognize it by name; they recognized the device and the third that the merchants could not see the profits from that advertising expenditure. (P. 555) I personally contacted three or four dozen merchants. I had had advertising agency experience in the east. I always made an investigation before I entered into a contract. I got a Dun & Bradstreet's report through my bank. I did not make any complaint on this report to anyone. I was not satisfied with my report but I did get a report that was satisfactory to me. At least I was satisfied to the extent I was willing to take a chance. (P. 563) Mr. Marsh agreed to help me with my getting started and he did so. (P. 568) I didn't attempt to find out whether cabinets had been installed in the hotels that they told me. (P. 570)

MR. N. N. EDWARDS,

called as a witness on behalf of the Government,
testified as follows:

I am a Postal Inspector and was one of the agents assigned [76] to investigate this case. I interviewed the defendant Martinez on February 14, 1941.

This was at 7225 Beverly Boulevard, which was the office of the Direct-U-Systems. February 14, 1941. I went out there on that morning. Mr. Martinez came out and told me that he was A. A. Martinez. I told him who I was, and I was a post-

(Testimony of N. N. Edwards.)

office inspector; that I was trying to get the location of C. S. Wallace, who was a salesman for the firm.

He told me that Wallace had not been with them for about two years, and had only made about one or two trips.

I told Mr. Martinez that I was going to make an investigation relating to Direct-U-Systems and their activities, and he said, Fine, he would like to show me one of their cabinets. The cabinet was there in the front office, and he did demonstrate that to me. In the course of the conversation I asked if Mr. Marshall was in. And he said No, he was not there.

I asked if Miss Fawkes was there, and he said No, she was in La Jolla visiting friends.

There were two cabinets in the front office. One was Sir Francis Drake Hotel cabinet, and another was for a hotel in Boston, Massachusetts. Mr. Martinez told me that they had another cabinet besides the one there in the office at that time installed in the Sir Francis Drake Hotel; that Mr. Bergen was the operator there, the franchise holder, and was just crazy about the machine. He said they had—I asked him if Mr. Burke was not the operator. He said No, they had settled with him; that they had Mr. Bergen; that Mr. Burke was a cry baby, and they had bought him out.

I asked about the other machines they had, and Mr. Martinez said, "We have five or six machines in New York."

(Testimony of N. N. Edwards.)

Q. By Mr. Neukom: Can we get the date of this interview again?

The Court: February 14th, if I remember. [77]

"A. February 14, 1941.

"Q. Very well.

"A. And I said, 'Mr. Weeks is your operator there, is he not?' And he said, 'Yes, he is, but he hasn't paid us any royalties, He is doing fine, however.' Mr. Martinez told me that.

Mr. Martinez said any squawks that they had were from poor sports who were not willing to work.

I talked with Mr. Talbott on March 26, 1941.

"A. Mr. Talbott came in to see me at my office on the 7th floor of this building, in response to a letter I had sent him several days previously, on March 26, 1941.

"Q. March 26, 1941?

"A. Yes. He told me that he had been with the old National Directory Systems and had resigned from that company eight or nine months before Ralph Young took it over in March 1938. He said the company had been all right, and had operated successfully during the time he was with it. And he told me that Direct-U-Systems was his business; that he was president, and Robert Johnstone was vice-president, and Helen Fawkes was secretary and treasurer. He said it was capitalized at \$25,000, one dollar par stock; that he held control of the corporation, 92 shares were

(Testimony of N. N. Edwards.)

issued, 45 to him and 45 to Miss Fawkes, and two shares to Johnstone. I asked him where I could locate Mr. Johnstone, and he said he didn't know, but he could be reached at the office most any time.

"I asked him how many employees he had at that time for Direct-U-Systems, and he said they had none at that time. [78]

"I asked him about his salesmen, and he said A. A. Martinez was salesman for him, and was earning a 30 per cent commission, and there was another salesman by the name of R. R. Bryant.

"Q. Bryant?

"A. Bryant. R. R. Bryant; that he, likewise, was making 30 per cent commission, and at that time they were advertising for him in Illinois. He said he had Mr. Marsh working for him for a while as a salesman. He said he also had Norman H. Marshall with him. He said Mr. Marshall had worked for him at different times; that he was not with him at that time. He said, "I see him every few days." That when he was with Direct-U-Systems he acted as a sort of overseer over the fellows out on the road. Also, that he had handled the San Francisco territory; that he had known Mr. Marshall for 15 years, and was a personal friend of his of long standing.

"I asked Mr. Talbott, 'How many franchises do you have open at the present time?' His reply was 'Only five doing any good.'

(Testimony of N. N. Edwards.)

“ ‘Who are these five and where are they located?’ I asked him. He replied that it was against the policy of the board of directors to give these names out. He said that all franchises were passed upon by the board of directors, and recorded in the minutes of the company.

“I asked Mr. Talbott, ‘Do you know of anyone who ever got his \$1,500 back on this deal?’

“His reply was, ‘There must be several. They [79] put in the boards,’ he said, ‘there has been no holler from them.’ On top of that he said, ‘They have not paid us royalties that were due us.’

“Mr. Talbott said ‘There is no profit to us on advance rentals. We must have the advertising royalties to make any money on these deals.’

“ ‘Who are these persons who have put in boards and haven’t complained to you?’ I asked Mr. Talbott. He replied that is a question the Better Business Bureau has asked us continuously and we have adhered to the policy of the board of directors in not giving this information out. One man, he said, told him verbally he had made his \$1,500 back. ‘He signed a repurchase agreement with us. He is in the Army now.’ ‘What is his name’ I asked Mr. Talbott. Mr. Talbott’s reply was ‘If I find out where he is located I will tell you his name.’ Mr. Talbott said he received no regular salary, he takes out a little money from time to time. No one was on salary there in the company except Miss Fawkes. I showed him photostatic copies of letters, from the Multnomah Ho-

(Testimony of N. N. Edwards.)

tel in Portland and the New Washington Hotel in Seattle and he stated, 'These are old forms from the old National Directory Systems kit. I thought we had torn all these up, didn't know any of these were out, didn't know Mr. McReynolds had these.' I had told Mr. Talbott [80] I had withdrawn them from the McReynolds kit.

"Q. On that point, were those the same photo-static copies as is evidenced by Government's Exhibits 58 and 59 that I have before me?

"A. Those are the two, yes, sir. I asked Mr. Talbott 'Who is this Mr. A. Kane the addressee of these letters?' His reply was he was the vice-president of the National Directory Systems, or had been the vice-president. I asked him 'Who makes these directories for you?' He replied, 'They are made by the Hayes Cabinet Works on Glendale Boulevard, the woodwork. The maps were made by the California Blueprint Company, they are hand drawn and they charge \$50 to \$55 for the work.' He said they hired electricians when necessary to come in in the evening and wire the cabinets for them. I said to him 'Have these directories ever been patented by you or by the company?' He replied, 'The only thing we have patented is the card changing device. That is patented.' I said to him, 'I would like to look over the files, particularly the minutes and correspondence, in order to ascertain what success your franchise holders have had and where they are located. Will you let me do this?' I asked

(Testimony of N. N. Edwards.)

Mr. Talbott, and his reply was, 'As far as I am concerned, you can come out to the office and have complete access to [81] records. We have nothing to conceal. However,' he said, 'we will have to take this up with the other members of the board of directors.'

"In the conversation we had at that time he referred to Mr. Weeks and said that he was their New York operator and was doing real well. I said to Mr. Talbott, 'That isn't the way I understand the situation.' Mr. Talbott replied, 'He started out fine. We shipped him five boards. He started tinkering with the directories and got them out of order. Those franchise holders will not leave the directories alone. Weeks,' he said, 'had not paid him any royalties at all. I asked Mr. Talbott 'how many boards does the company have installed now?' 'He said 15 out with stereopticon slides instead of the rotating machine, and a great many more of the old type in addition.' I asked him, 'Have you ever received royalties on these?' And he replied, 'No, we have never received royalties from anyone.' I said to him, 'I notice most of the letters sent out by the company are signed C. W. Talbott.' I said to him, 'However, there seems to be a variance in the handwriting.' I had about 150 of these letters on my desk. These were letters sent out by the company to various individuals, particularly franchise holders. I said to Mr. Talbott, 'I want you to look these over and tell me who actually signed the letters.' Mr. Talbott picked one letter [82] at a time and set

(Testimony of N. N. Edwards.)

aside ten which he said he had actually signed C. W. Talbott, and in another pile he had 20 which he said Miss Fawkes had signed C. W. Talbott, and in the other pile all the rest had been signed by Norman H. Marshall. That is, C. W. Talbott was signed by Mr. Marshall.

“I said, ‘If you own this business and are running it why don’t you sign the letters?’ He replied from August 1940 to the first of this year he was home sick. He said, ‘I also have worked in the shop and asked Marshall to help with the handling of the mail.’ I called his attention to initials on the lower left hand corner of these various letters, particularly a capital T in a bar and a capital F. I said ‘Then that doesn’t actually mean that Talbott dictated the letters to Fawkes?’ ‘No,’ he said. He said he dictated most of them, however, Marshall also dictated some and in every instance the T:F was placed on regardless of who did the dictating. That was the substance of my first interview with Mr. Talbott.

“On the following day Mr. Talbott telephoned me at my office and said he had been thinking the matter over and thought possibly it might be helpful if they would prepare and send to me, if the company would prepare and send to me a statement.”

At the time Mr. Talbott was discussing the various letters to which his name had been signed, he designated the ones he had signed and I put ‘C.W.T.’ on each of them. [83]

(Testimony of N. N. Edwards.)

“A. Yes, sir. Mr. Talbott told me on the phone he had been thinking it over and thought it would be helpful if he would get up a statement showing the dates the cabinets were shipped, also copies of releases signed by franchise holders which certified to satisfaction of services rendered by the division representatives. That is, he said he would prepare it on Weeks, Schutt and McReynolds. I suggested to him while he was at it he also submit the same data regarding Mr. Burke at San Francisco. He replied to this that this deal had been closed, a repurchase agreement had been signed, a new operator was there, there was no business yet, but nevertheless the new operator was satisfied. I told him nevertheless I would like the information on that deal. I said, ‘I would like the information on the Burke and Williams deal in Oklahoma City, also Byron Kennedy in Ohio.’ He said he would get these up for me. In connection with this telephone conversation he said he had mentioned to one other board member my desire to get the names of franchise holders. This other board member said, ‘You know what happened when we did this before. One dissatisfied operator met a satisfied operator and made the latter dissatisfied.’ However, Mr. Talbott told me on the phone ‘This is not final, we are having a board meeting and will consider your request further.’ [84]

“On April 5th Mr. Talbott phoned and said he had prepared the data he promised for me and would like to bring it in. I told him it would be

(Testimony of N. N. Edwards.)

all right with me if he cared to come in the following morning. I wish to make a correction. He called me April 4th and came in April 5th, and brought a large envelope containing various papers which he gave to me and said at that time the company wanted to cooperate and would like me to examine everything it had including the minute books of the corporation."

"On May 22, 1941, I telephoned the office of Direct-U-Systems and talked with Mr. Talbott. I told him he had been in my office on April 5, 1941, and at that time he had told me it had been the decision of the company to let me have free access to all their books and records and that I would now like to avail myself of the opportunity of looking them over. I said 'Will it be O. K. for me to come out and look over the papers?' He said, 'Yes, indeed, it's O. K. with us.' I said to him, 'When can I come out?' He said, 'Any time you say.' I said, 'How about tomorrow morning?' He said, 'Fine, we'll be looking for you.'

"I called at the office of Direct-U-Systems on Beverly Boulevard the following morning, May 23, 1941. There was no one there except Mr. Talbott. And that was in the front office. I engaged in conversation with him in connection [85] with which he told me there was no patent on the board, that none was pending on the board. He said, 'We never tell anyone the board is patented.' He said, 'We do have a patent on the rotator machine applied

(Testimony of N. N. Edwards.)

for but that has not yet been granted. It is pending.'

"I said, 'While I am here I want to examine if I could all the correspondence and papers relating to that patent.' He turned to the safe and said, 'I am sorry, it's locked up and I can't get it for you.' I asked him, I said, 'There had been a board for a short time at the Plaza Hotel in San Francisco. Who put that in?' He said, 'That was either Mr. Brown or Mr. Burke.' I said, 'Will you please get me Mr. Brown's file so I can look that over?' He went back into a rear room and was gone for three minutes and came back and stated 'I don't know just where the secretary filed this. It will take me a little while to find it.' I told him I was in no hurry, I would like to see it.

"He returned again to the rear room and after being away for two minutes came back again and said 'I just can't find it. We will have to get it for you.'

"I asked him how they placed these ads for franchise holders and he said they placed them through the Pacific National Advertising Agency, which was merely a name used by them and was not a corporation. I told him about [86] the sale canvass which had been given to C. S. Wallace, described it to him. He replied, 'By George, I never saw it.'

"I asked where A. A. Martinez was at that time and he said, 'I don't know where he is. He is not working for us any more. He left here last fall.'

"A. He said Martinez had gotten into some dif-

(Testimony of N. N. Edwards.)

ficulty. He said, 'I had insisted that he either clean it up or get out and he got out last fall.' He said Mr. Bryant was then their only representative, that he was in the Northwest and would be in Salem, Oregon soon. I said, 'I want to find out who the successful franchise holders are. You told me I could get some and they were recorded in the minutes of the books.' I said, 'Let me see those minutes.' He said 'They are locked up in the safe and I can't get them for you.' He said, 'If you call next week in advance I will get them out for you.' I said to him then, 'Mr. Talbott, I would like to have a definite, specific answer as to whether I can get the names and addresses of these franchise holders.' And he said—I can't tell you what he said. My notes don't go that far.

"Q. Go ahead.

"A. We made another trip to the rear of his shop. He was showing me one of the rotating machines and stencilled or cut into the metal frame was the following words which I copied [86A] off 'Patent pending No. 161,' which appeared as 'Pat. Pend. No. 161.' That was taken off the rotating machine. I told Mr. Talbott I wanted to interview Mr. Marshall and Miss Fawkes and himself and would prefer to have the three of them together but would handle interviews separately if it were more convenient. Mr. Talbott said, 'Well, Mr. Marshall is an uncertain quantity. He is in and out. It is easy for Mr. Talbott and possibly Miss Fawkes to join in the interview, but it may be difficult to

(Testimony of N. N. Edwards.)

get Mr. Marshall to make a definite appointment, that is, the joint interview.' He said Mr. Marshall was in that office that morning but had gone out to Hollywood and didn't know when he would be back. I asked Mr. Talbott to have Mr. Marshall phone me so we could arrange for an interview, and he said he would ask him to do this.

"I wanted a definite answer as to whether or not he could give me the names and addresses of the franchise holders. He said 'A definite decision will be given to you whether you are to be given the names and addresses of the franchise holders.' Mr. Talbott said it was O. K. with him but it was not O. K. with the other two members of the board."

I talked with Mr. Marshall on June 16th, 1941. He told me he had no connection at all with the Direct-U-Systems for the last four or five months, and that his only interest in the Direct-U-Systems was through the fact that he was a personal [87] friend of Mr. Talbott. He said Mr. Talbott had been a very dear friend of his and had done him several favors which he greatly appreciated, and in return therefor he was assisting at times in running Direct-U-Systems. He said Mr. Talbott's money was in the company, although Mr. Johnstone had a little money in it, also Miss Fawkes, but that her share was not great. I asked him how much money was invested in the business and he said that possibly \$25,000, altogether, would take care of it." (Page 597, Tr.)

(Testimony of N. N. Edwards.)

“I asked him what his connection with Direct-U-Systems had been and he said at different times he had served as sales manager; that he never devoted full time to it; that instead of receiving a salary he received a commission of five per cent from everything that came in from franchise holders, including any royalties that might be due. I asked him whether the company had ever received any royalties on advertising and he said that it had been so long since he had looked in the books that he wouldn’t be able to state exactly what the situation was, in this respect. He said that it was handy for him to render what assistance he could to Mr. Talbott inasmuch as he, Marshall, officed out there at the time. I asked Mr. Marshall to explain the situation of patents on the equipment of Direct-U-Systems and he said there were no patents and never had been.” (Page 598, Tr) “That the directory was not patentable at this time, that many years ago the original patent on such a directory was taken out by a fellow in Munich, Germany, but it had run out and was no longer in effect. He said that the National Directory Systems and the Direct-U-Systems had made an effort to patent the board but had not succeeded. Mr. Marshall said the rotator was patented, that it had been patented possibly one year ago through an attorney whose name he thought was Coleman. I asked him whether he personally knew of any franchise holder who had been able to make \$6500 per year. He replied although he felt certain they had, none of them had ever

(Testimony of N. N. Edwards.)

admitted it. He said [88] there was no doubt in his mind that Mr. Weeks, in New York City, had made plenty of money on his franchise and said it was ridiculous to believe a man who had as many boards out as Mr. Weeks, was not collecting royalties on them. He said he suggested to Mr. Talbott that he get out of the business because it appeared impossible to get the operators to send in their royalties. I asked him about National Directory Systems, and he replied that everybody in that company had made money on the enterprise. He said that his connection with the National Directory Systems was that of manager, and that he was with this company for practically its lifetime, and that while he was with the National Directory Systems they paid a salary and also a commission. I asked him if the National Directory Systems had been such a money maker why he had given it up, and he said that Mr. Talbott ran out of liquid cash and his assets became frozen and it was necessary for him to sell the corporation.

“On this occasion I handed Mr. Marshall 228 letters from Direct-U-Systems to franchise holders and, as Mr. Talbott had done, he looked at each letter and set in separate piles those letters signed by the various individuals. Each one of these letters bore the name of C. W. Talbott in pen and ink, 186 of which Mr. Marshall told me he had signed the name C. W. Talbott to. Mr. Marshall said that he had a power of attorney from Mr. Talbott to sign his signature; that Mr. Talbott, being an old man,

(Testimony of N. N. Edwards.)

generally left the office at 3:30 or 4:00 o'clock, also that Mr. Talbott had been absent from the office at that time on account of sickness.

"I mentioned to him the franchise holder at Dayton, Ohio, by the name of Byron Kennedy, and that Kennedy had not been able to make any money on his deal. Mr. Marshall's reply to this was that Kennedy had skipped out and had no kick coming.

"With reference to A. K. Barnes, of Pasadena, he said [89] this man had no complaint, that they had done everything for him even to the extent of humoring him by going out and buying up an old automatic directory in the Alexandria Hotel.

"C. I. McReynolds, he said, was just plain nuts. 'He is crazy. McReynolds had ordered a board, refused to take it, and deliberately abandoned his franchise.'

"Mr. Marshall said that Ralph H. Bergen also had no squawk, that Bergen had come down here and signed a contract after very careful investigation of the business; that a splendid directory was in the Sir Francis Drake Hotel and the equipment including the rotator machine gave him no trouble. He said that for no reason whatever, Bergen went back to his old job, deliberately walking off and leaving the territory.

"Mr. Marshall said that Mr. Weeks, in New York, complained that the company would not let him handle the electrical works there and that no one could make him, Marshall, believe that he, Weeks, didn't make plenty of money off of his franchise.

(Testimony of N. N. Edwards.)

“Ralph Burke in San Francisco, he said, certainly had no squawk coming. Burke, he said, was a blackmailer.” (Tr. pp. 603, 604.) “Mr. Marshall said that he, Marshall, was the one who got the lease on the Sir Francis Drake Hotel. He said he finally got the Sir Francis Drake Hotel to sign up and that Burke went out and sold 15 or 20 ads without any assistance from anyone; then he just blew up and went back to the shoe business.

“I asked Mr. Marshall, ‘Who told you they placed the directory in the Plaza.’ He said the directory had been placed in there by Mr. Browne. He said that the company had settled with Browne over his, Marshall’s, protest.

“With reference to T. E. Schutt, Mr. Marshall told me that this man was O.K., until the Better Business Bureau meddled. He said they were the biggest bunch of grafters in the United States, and if anyone should be investigated the Better Business Bureau [90] should.

“With further reference to his signing Talbott’s name to letters going out from the Direct-U-Systems, Mr. Marshall stated every letter sent out which he signed was the result of a discussion with Talbott either before it was dictated or afterwards. In other words, what was contained in the letters was based on Talbott’s opinion and judgment in the particular matter. I asked Mr. Marshall where Martinez was, and he said he didn’t know, he hadn’t been with them since right after the first of the year.

“Mr. Marshall identified a number of letters

(Testimony of N. N. Edwards.)

signed 'R. Johnstone' and said that he, Marshall, had placed Johnstone's name on the letters but that he had discussed each one of these letters with Johnstone, that Johnstone knew nothing about the business at all and would say to him in every instance, 'I don't know a darn thing about it; you go ahead, whatever way you think best'. (Tr. pp. 604, 605.)

"I showed Mr. Marshall a number of letters going out from the National Directory Systems, signed A. Kane, and he told me that during the time he was with National Directory Systems he had signed all the letters 'A. Kane'. I asked him where Mr. Kane was, and he said he hadn't heard from him or seen him for two or three years; that he was quite an old man." (Tr. p. 606.)

"I had another interview with Mr. Marshall on November 7th, 1941. On that occasion I inquired of Mr. Marshall has connection with the Automatic Map Company. He said that the reason he had turned the old National Directory Systems over to Mr. Young was that he, Marshall, owed some \$3000 for paper, and so forth, in connection with the operation of the National Directory Systems and that he had not been able to pay these accounts. He said that Ralph Young took over the National Directory Systems with the understanding that he, Young, would pay off the bills, and that Young did not continue with the National Directory Systems but [91] instead started the Automatic Map Company; that toward the end of the existence of the Automatic

(Testimony of N. N. Edwards.)

Map Company, Young was in desperate condition and that he, Marshall, took about \$800 worth of the stock." (Tr. p. 607.)

"On March 31st, 1941, I talked with Mr. Marsh, who said that he became acquainted with Mr. Marshall prior to 1935; that he was an attorney and did some legal work for Marshall and an acquaintance grew up between them. That in 1935, Marshall was then running the National Directory Systems and that as a result of his acquaintance he became district manager for the National Directory Systems in the selling of franchises. He said that he made one or two trips to get the hang of it and finally, in 1935, closed his law office and became a franchise salesman, or rather a district manager for the National Directory Systems in the selling of contracts for franchises, and that he became the first salesman the National Directory Systems ever had. That as a result of Ralph Young taking over the National Directory Systems, he thereafter became a salesman for the Automatic Map Company which Young had organized. He worked for that company until January of 1940, and then went to work for Mr. Marshall in the Direct-U-Systems; that he was on the road for about six months and came in off the road about July, 1940. I asked Mr. Marsh if in all his experience with the National Directory Systems and the Direct-U-Systems whether he had known, or whether he knew at that time, of a single successful franchise holder. In reply he mentioned the name of Mr. Nash, at Newark, New Jersey. He said that

(Testimony of N. N. Edwards.)

this man was a franchise holder of the old National Directory Systems and had placed three installations. I told him that it did not appear from my information that Nash had been successful but on the contrary had lost considerable money, to which Mr. Marsh replied, 'Well, he placed three installations'. I said to Mr. Marsh, 'We cannot judge the success of a franchise by the number of installations but by the permanency of the business and the amount of money the franchise [92] holders would be able to earn from it.' I said, 'Mr. Marsh, on the basis of a business being permanent and paying profits to a franchise holder, do you know of anyone who has been successful?' He said on that basis he did not know of a single successful franchise holder. He further said that the National Directory Systems were always broke. I asked Mr. Marsh why he quit the National Directory Systems in 1937, and he said that he was in Nebraska at that time trying to close a deal and a report came through, he believed from Dun & Bradstreet, which linked Mr. Marshall with the company as sales manager, and he became discouraged and quit." (Tr. p. 610.)

"Mr. Marsh told me that it was true that the Direct-U-Systems had had lots of trouble with the rotator machine. I showed Mr. Marsh the photostatic letters from the hotels at Portland, Oregon, and Seattle. (Government's Exhibits 57 and 58.) He said he had never carried these in his kit; the only photographs he carried were those of the Park Central

(Testimony of N. N. Edwards.)

cabinet, the Imperial Hotel, Times Square, and Sir Francis Drake." (Tr. p. 611.)

(At this time the indictment against the defendant Helen May Fawkes was dismissed by the Court. (P. 613.) [93])

By Mr. Neukom

"The Government now rests."

Whereupon motions were made by each of the respective counsel for dismissal of the indictment as to each of the remaining defendants and a motion for the court to instruct the jury to find each defendant not guilty upon each count in the indictment.

Whereupon Count 6 and Count 7 were dismissed as to each of the defendants and an exception noted for the refusal of the Court to dismiss the remaining counts as against each defendant.

Whereupon

RALPH YOUNG

called as a witness on behalf of the defendants testified as follows:

(P. 631) At one time I owned the National Directory Systems acquiring a controlling interest in it in March of 1938. I sold the design patent which is Government's Exhibit 30, to a man by the name of Caldwell. I put in a good deal of work improving the device. (P. 634)

(Here the witness goes into detail as to the improvements which he made.)

(Testimony of Ralph Young.)

This equipment is custom built in each case. There is no possibility for equipment being built for one person and utilized by another without its complete correction. The map would be useless if moved into another hotel because the hotel is the center of that map. The cabinet and equipment weigh between 400 and 500 pounds. The wood is solid hardwood not veneer. In this particular case, it was walnut. The developments and improvements were consistent. We never stopped developing.

(Here the witness gave the various items of expenditure for the various parts of the board.)

I have had experience selling advertising to different merchants in different parts of the United States. Certain spaces [94] were reserved as free installations on the map for points of public interest.

Cross Examination

By Mr. Neukom:

I do not know whether anyone is still operating these maps or not. I do not have any of the books and files. At different times I received royalty payments from operators of the Board. A profit could be made if we sold only half of the spaces on the board. (P. 653) Of course if a man could not make any money out of this device it was not of any value to him. (P. 657) Sometimes it took from 30 to 90 days to make a cabinet. I do not believe the National Directory Systems franchise holders made any money but I thought at the time that 40% to

(Testimony of Ralph Young.)

50% were successful. I bought the National Directory Systems stock, that is 75% of it, for \$3500. Sales got between 10% and 15% commission. I am not sure but I think Mr. Flagg is the only one who ever sent me in any royalties. Outside of the Boston installation, I don't believe that I received any royalties during the time I operated the Automatic Map Company. (Tr. p. 660.) I received a letter dated January 22, 1940, from Mr. Glagg of Boston; this is the same Mr. Flagg of whom I have testified, from whom I have received royalties. (Tr. p. 670.) Here the Government introduced in evidence the letter referred to, being Government's Exhibit 79, as follows:

"Dear Mr. Young:

"Thank you for yours of the 19th. I wish you were right on the figures you quote in same, but unfortunately you are not. Instead of selling 60 in Boston it was less than 35, and instead of 40 in Prov."—I assume it is Providence.

Mr. Stoddard: Yes .

Mr. Neukom: (Reading): ——"It was just over 20. In other words, around 55 contracts in a little over 9 months, and some of those for only 6 months. Two of us have been here since the day after Christmas, and one week three of us were here, and we [95] have only sold 10 contract,"—

Gentlemen, this letter is on the stationery of some hotel, apparently, in Hartford, Connecticut.

—"to date or \$850, and deduct hotel bills and carfare of \$4.00 a week apiece, and you will get our

(Testimony of Ralph Young.)

picture. I think this proposition shows Fred and I a profit of \$2400 December 31st, without either of us drawing out a cent for living expenses or salary. We have stuck to it, feeling that we would probably go in the hole the first year but if it was any good it would be easy to renew these accounts next year, get more, and perhaps in a few years we would have something.

“Now, deduct my expenses down here for five weeks and see what we have left.

“If the customers we have on the Boston board were satisfied with the service, if it was bringing them business, and if they would pay us what they owe us, we would feel better. We are after them all the time to pay up, and by a big majority they want us to forget their contracts and take their names off.

“I forgot to tell you that \$2400 profit on the other side was a paper profit (no allowance for bad debts.)

“Now, I have definitely made up my mind, and I think after due consideration that this proposition, as we have it, will never make any money for us, and I am not going to spend any more of my money after I finish in Hartford to put other boards out in other New England cities. It is just foolish.

“In the first place, this idea is not new. Fifteen years ago they tell me they sold one down here to be placed on a street corner near the depot. A number of these merchants went for it—electric lights,

(Testimony of Ralph Young.)

and all. The kids were the only ones to use it, and they soon broke it up.

“In your letters you suggested depots and airports. What do you think kids would do to one of these in the South Station [96] in Boston. I tried getting a lease there, and where it would be seen and used, and they wanted \$10,000 rent. That is no ideal dream. Of course they said I would have to take much more, very much more space than we needed.

“Large stores in every city we have been in just laugh at this idea. They are not interested in the type of traveller stopping at these small city hotels, just passing through. In large buying centers, like Boston, New York, Chicago, etc., I still think it has merit in good hotels. But hotels as this one, filled with salesmen and insurance men, conventions made up mostly from Connecticut people, etc., I must agree after staying here five weeks, if I was a merchant I wouldn't go for it at \$85.00 a year. \$25.00 would be top. Now, that leaves certain kinds of doctors, automobile concerns, and such. These hotels, most of them, won't let you put on eating places, package stores, beauty parlors, etc., and the latter are hard to get anyway, because they always have one in the hotel. In fact, most stores that naturally do business with hotel people are either in the hotel or right near it and are paying high rent to get that business, and try to get them to pay any more for our service.”

I will skip some, gentlemen.

(Testimony of Ralph Young.)

“Of course, your price on these boards is way out of line and that would have to be adjusted. If that board in the Copley had to”——

I can’t read this word.

——“for more than \$350, I wouldn’t think so much of the proposition. You could get three banks in Boston, if you could get any; Springfield, 2; Lowell, 1. God, there are plenty of them if you could work it, and they would repeat. It wouldn’t be hard selling, and you could keep a bunch of salesmen working if you had the right setup. I believe you could in most places [97] get \$50 a year, but you would need a 25 per cent commission for your salesmen.

“Say you could build a 50 space board for \$250 and a 100 space board for \$350, your cost, you charge us the cost of the board so you have no investment, and then take 5 per cent royalty, and we put out 25 or 50 in New England and keep building. We have got to get the big slice to cover selling costs. You wouldn’t have any books to speak of to get out, use the same books over and over, just little working cabinets for salesmen.

“Now, if we could work out something like this, and could put it over, we would both make some real money, and over a period of years I don’t believe it would be necessary to pay the banks anything for rent, give them free their location and all their branches, and we could show on the map. Of course, if they insisted on rental we could write that in whatever they insisted on. But sell them on

(Testimony of Ralph Young.)

the idea of service to their customers, their branch locations.”

Skipping.

“I would like to know what you think of this idea as soon as possible. Unless I am crazy it looks to me as if it had real merit, and the present one has little or none. Kindest regards.

“Sincerely yours.”

(Tr. pp. 671, 672, 673, 674, through line 7 of 675.)

Redirect Examination

Sometimes people collected money from the board and then walked off and never sent any payments in to me. We had the same method that the Direct-U-Systems had. (P. 680.) We did not sell the advertising boards. We sold them franchises.

CHARLES W. TALBOTT

called as a witness on behalf of himself, testified as follows:

I am one of the defendants in the case and had been [98] connected with the National Directory systems at one time as president. (P. 682.) I did most of the mechanical work on the cabinets. Sometimes the wooden rollers and rubbers would mar the cards and they would become discolored. Then a Mr. Painter, an engineer, now in the Army, was employed to make mechanical corrections. I think that drawings were submitted to the Patent Office on

(Testimony of Charles W. Talbott.)

this animator device but so far as I know it had not been patented. I never represented to anyone that it was patented. I recall a [98-A] conversation with Mr. Schutt in the presence of Mr. Marshall. I introduced Mr. Marshall and not as anybody else. I told them he was General Manager of the company and that was true. Mr. Marshall looked after the business, the correspondence, and practically all of that business of that nature. (Tr. p. 690.) Mr. Painter was our engineer on this device, and I think I introduced Mr. Marshall to Mr. Schutt half an hour after I introduced Mr. Painter to him. The Schutts said they were dissatisfied and wanted their money. Mrs. Schutt did the talking. There were various conversations with these people. He said he had been told by the salesman Morgan that there were no other devices like this out and I told him Mr. Morgan should not have made that statement. Schutt said he was not interested in looking at the work nor any improvements that were going on. All he wanted was his money back. They made a demand for their money and I told them I could not give them an answer as to that, that that would have to be passed on by all of the members of the board of directors. (Tr. p. 698)

I never told either Schutt or his wife that they would be given a check for \$1500. I did submit to them a repurchase agreement and told them it would be thirty days if they wanted to enter it before one of our men could be in the territory. I told them

(Testimony of Charles W. Talbott.)

we could not put another man in that territory as long as they had the contract, and I do not agree with their version of our conversation. I know that Mr. Marshall frequently signed my name to many letters that were sent out. Sometimes I was familiar with this correspondence. We supplied five units of equipment to Mr. Weeks in New York. (P. 702) There never was any time when equipment was requested by a franchise operator that the equipment was not furnished and we were at all times financially able to supply the equipment called for. Nor did I ever tell anybody to represent that this device was covered by patent. No new contracts have been made [99] since the Government required us to turn over our books and records. I received the following letter under date of October 17, 1940:

(Defendant's Exhibit No. 3-M.)

"Dear Mr. Talbott:

"It is a real pleasure to write you this letter. The directory arrived today and is in operation though not on public display. The hotel engineer was very busy so my salesman and I set the directory up in one of the hotel parlors.

"It is even more beautiful than I had expected and is operating perfectly so far. I like the 8x10 cards very much, and so have those who have seen them. Mr. Beres is pleased with everything and wants a couple of cards made for other hotel activities. We will have the photos taken as you wish and I will probably have some newspaper publicity too.

(Testimony of Charles W. Talbott.)

“Everyone who has seen the directory has been delighted with its beauty and with the service it offers. There is just one improvement that I would like to suggest at this time. There should be some provision made to better light the face of the directory and subscriber listings. What do you recommend?

“I am enclosing three other contracts we have sold since I last wrote you. Also the actual contract for Dr. Burkhardt whom we already have listed. I would like to have your artist write a suitable card for Al Allen Dancing Academy. I will write you as we proceed. Yours very truly, Byron Kennedy, “Direct-U-Systems of Ohio.

“P.S. Please write a card for Gem City Hat and Shoe Rebuilding Co.” [100]

I would say we spent around \$1,000 in the development of the rotator or animator. (P. 723) I think there were eight or ten franchises sold in addition to those that had been testified about. I would say Mr. Kennedy was a satisfied customer and I do not know that he ever abandoned the board. I think Mr. Marsh made the sale to Mr. Kennedy. I am not sure as to the amount, whether it was \$750 or whether it was \$1500. I remember a sale having been made to Mr. Broderick of Detroit—I think the amount involved was \$1500. From his first letter I would say that he was successful, but from his last letter he began complaining. I recall a sale to one B. W. Helm, for the State of Wisconsin. I think Mr. Marsh made that sale and the amount involved

(Testimony of Charles W. Talbott.)

may have been \$1500. I don't think the installation was ever made. I do not recall a sale to a man by the name of Maurice Bright of Minneapolis. I do recall a sale to one James Gregory of Madison, Wisconsin—the amount of money involved in that sale may have been \$1500. I was ill about this time and a number of those things did not come to my attention. My illness took place in August of 1941; prior to that time I had been in fair health and closely associated with office affairs. (Tr. pp. 731, 732.)

I think I remember a sale to Mr. E. F. Bader, but I don't remember the amount—it probably was \$750. I remember a sale on December 29th to J. H. Hillard of Dallas, Texas. I think he put up a deposit of something like \$250 or \$300. I do not remember a sale to Bernard Ghio of Texarkana, Arkansas, but I would not say that there was no such sale. I remember a sale on January 17, 1939 to E. J. Cheetam of Independence, Missouri. As I recall, the amount involved was \$1500—I think it was made by Mr. Martinez. I remember a sale on September 14, 1939 to George M. Humbrecht of St. Louis. I do not recall exactly the amount of this sale but it may have been \$1500. I remember a sale on or about January of 1940 to one Robert Langstaff of Pittsburgh, Pennsylvania. I'm not quite [101] certain as to the amount but I think it was \$1500." (Tr. pp. 733, 734.)

I recall a sale to Edith I. Fitch of Palm Beach, Florida, on February 10, 1940, in the sum of \$1500

(Testimony of Charles W. Talbott.)

—I think Mr. Wallace made that sale. I remember a sale on February 20, 1940 to Wilbur Eason, Jr., of Amarillo, Texas. Mr. Martinez made that sale and I think, perhaps, the amount involved was \$750. I recall a sale on April 5, 1940 to J. E. Wagoner of Kansas City, Missouri. Mr. Martinez made that sale and the amount involved, as I recall, was \$1500. I do not recall a sale on or about April 17 to T. C. Jones of Lynchburg, Virginia. There may have been such a sale made by Mr. Wallace for the sum of \$1500—I am not sure. I think I recall a sale made about April 23, 1940 to R. H. Michaels of North Liberty, Indiana. (Tr. p. 735.)

I believe Mr. Bryant made that sale and the amount involved may have been \$1500. I think I recall a sale made on May 29, 1940 to M. A. Green of Franklin, Tennessee. The amount involved was \$1500, if I recall correctly, and I think Mr. Martinez made the sale. I recall a sale to K. R. Lawless of New Orleans, for the State of Louisiana. The same was made by Mr. Martinez and I think the amount involved was \$1500. (Tr. p. 736.)

In December of 1940, a sale was made to one Phillip G. Bittener of Spokane, Washington. I'm not positive, but I think Mr. Bryant made that sale and the amount involved was \$1500. A sale was made December 12, 1940 to one E. M. Groble of Spokane, Washington, for the territory of the State of Oregon. Mr. Bryant made that sale and I think it was for \$1500. I wouldn't know how many persons whose names have been enumerated were success-

(Testimony of Charles W. Talbott.)

ful in their venture. I was familiar with some of the files and records—the files were in the office at all times and I had access to them. (Tr. p. 737.)

Upon numerous occasions I had met with the board of directors and all of the contracts I have mentioned here were [102] approved. I was also present at the meetings of the board of directors when all of the employment contracts for Mr. Wallace, Mr. Morgan, Mr. Bryant, or Mr. MacNeil and all other salesmen were approved. The board of directors consisted of myself, Miss Fawkes, and Robert Johnstone. Johnstone was about the business very little—he knew very little about it. (Tr. p. 738.)

It is true that the majority of the meetings of the board of directors were held by Miss Fawkes and me. As a usual thing the corporation paid its obligations promptly. (Tr. p. 739.)

The directories which I have mentioned or testified about at Evansville, Indiana, Minneapolis, and the Cosmopolitan Hotel at Denver, are all installations that have been made subsequent to this investigation, that is to say, the franchise was made before the investigation but the installation itself had not been made. I do not recall among the 32 sales mentioned how many boards had been built—our shipping records would show. All of the records and files of the corporation were delivered to Mr. Edwards, the Postal Inspector. (Tr. p. 741.)

ALBERT A. MARTINEZ

called as a witness by the defense, testified as follows:

I was employed by the Direct-U-Systems as a salesman and started in 1938 and worked up until the time of the Government's investigation as such but not since. I remember Mr. Burke who visited me in San Francisco at the El Cortez Hotel. I showed him the small model he had of the cabinet and typed him up figures showing what he should make. I agreed to get salesmen for him and got them. (P. 753) Then I told Mr. Burke to go home and think the deal over. (P. 758) and later he brought his wife in and I went over the proposition with them again and a contract was signed and he gave us the check and I mailed the check to the company. (P. 761) I went around to some of the hotels and I got some leases for him. (P. 764) I trained the salesmen to the best of my ability; showed them how to sell it and how [103] to present it. This was after he had signed the contract and turned over the \$1,000 to me. The usual agreement acknowledging the work that we had done was signed by Mr. Burke. I never told Mr. Burke one way or the other whether the device was patented, but I carried information with me to show that the company was actually in operation. (P. 770) and I remember Mr. Brown and the conversation I had with him was about the same as with everybody else and I sent his money in to the company. (P. 775) I never to my

(Testimony of Albert A. Martinez.)

knowledge misrepresented any of the equipment or the deal while I was connected with the company.

Cross Examination

By Mr. Veale:

Prior to the time that I became associated with the Direct-U-Systems I had been associated with the National Systems. I became associated with the National Systems about two months after they started. I went out and contacted the hotels, tried to get leases on hotels, and then went around and called on some of these people and tried to help them get their sales force and train them and help them with it any way I could. Yes, the people I refer to were those who had purchased franchise leases. I became familiar with the methods of operation of the National Systems—I studied it. The plan was quite similar to the Direct-U-Systems—the method of doing business was practically the same. The National Systems ran ads in the papers, which were answered by various people and then letters were written to the various prospective purchasers when replies had been received from these ads. I had nothing to do with the preparation or publication of the ads. I knew they were running different ads in different places. (Tr. pp. 780, 781.)

I have seen some of the ads because lots of times I would show them the ad and ask them if they had received that ad. I afterwards became a salesman, selling purchasing agreements or franchise agreements—I made quite a few sales. If I remem-

(Testimony of Albert A. Martinez.)

ber correctly, the first sale I made was at Toledo—that was in [104] February of 1936, and that sale was made to a man by the name of C. I. Malley; I think the amount involved was \$1500. (Tr. pp. 782, 783.) It was a fixed plan of the company to sell two cabinets; I never tried to sell a deal unless they had to take two boards. I made a sale in March of 1936 to a man by the name of E. F. Malley; if I remember rightly there was \$1500 involved in this sale. (Tr. p. 783.)

In June of 1936 I closed a deal in Pittsburgh, and I wouldn't swear to the man's name—it might have been John Hartley. I think the amount involved was \$1500. In August of 1936 I met a man by the name of R. E. Nash, of Maplewood, New Jersey. I cannot remember what territory we sold him, nor the amount involved but I suppose it was \$1500. (Tr. p. 784.)

In September of 1936 I met a man by the name of C. E. Bowers, Jr., in Baltimore, Maryland. I can't remember what territory was sold nor the amount of money that was involved—it might have been just like the other, \$1500. In September of 1936 I sold Mr. Harry Wood of Tacoma Park, Maryland, the territory of Rhode Island and Boston—there was \$1500 involved in that transaction, if I remember correctly. (Tr. pp. 785, 786.)

In September of 1936 I sold the territory of Philadelphia to one L. L. Edwards at Bayside, New York. I then met a man in Washington and told him that if he was interested, I had the Philadel-

(Testimony of Albert A. Martinez.)

phia territory open. I sold him the territory, I think, for \$1500—whatever it shows on the records. (Tr. pp. 786, 787.)

In September of 1936 I sold W. H. Northnagle of Baltimore, the territory of Maryland. I was asking him \$1500—I don't know what I did take, to tell the truth about it, but I know that I sold it. On October 20, 1936, I may have sold H. B. Row of Aberdeen, West Virginia, the west one-half of the state of Virginia. If the records show I did, I did. As I say, I don't remember all of these names of these different people. I am not sure that \$1500 was [105] involved, but if I sold him the territory that's what I asked him. (Tr. pp. 788, 789.)

In January of 1937 I met one S. L. Cohn at New Orleans, and sold him that portion of Louisiana south of St. Charles; the amount involved in that deal was \$1500. In March of 1937 I recall having sold W. D. Oliver the territory in Texas of Dallas and Fort Worth; I do not recall the amount that was involved in it but it was probably \$750. (Tr. p. 789.)

In that same month of March, 1937, I sold to one C. D. Murray of San Antonio, Texas, a portion of Texas immediately surrounding San Antonio. I remember the deal and I suppose the amount was \$1500. On April 9, 1937 I met one J. Kendrick Jones of Houston, Texas, or James, and sold him the territory of Houston, Texas for the sum of \$750. In July of 1937 I sold Mr. A. M. Gonzales of Se-

(Testimony of Albert A. Martinez.)

attle the territory known as the State of Washington, for the sum of \$1500—at least I suppose that was the deal. (Tr. p. 790.)

In August of 1937 I sold Mr. I. W. Smith of Seattle the territory known as the State of Oregon, for the sum of \$1500. In each of these sales that you have mentioned I used the same or similar tactics as were used in selling Mr. Burke—I had one setup, and that is all I went by. (Tr. p. 791.)

At the time I approached these various men whose names you have just called I had knowledge of the advertisement that they had answered. I had to have that in order to know how to approach them; there was no other way to get them. I tried to go over the proposition with them, from start to finish, so that they didn't have anything—I hit on all these questions so that they didn't have anything to ask me after I got through. I was thoroughly familiar with the plan of operation of the company. (Tr. p. 793.)

I would show them the profit they could make off of [106] one board if they put it in; then it was up to them, if they put in more boards they made more profit. When I first went out I think I started out on 20 per cent and a certain percentage of the money they received, that is, 20 per cent of the sales plus so much of the royalty. (Tr. p. 793.)

When the old National Directory went out of business, if I remember rightly, there was a period of three or four or six months that we were out

(Testimony of Albert A. Martinez.)

of business; in fact, I wouldn't go out on that kind of a proposition so they agreed to give us 30 per cent—a straight 30 per cent; even then I couldn't make any money. (Tr. p. 794.)

If I remember rightly, they wrote me once or twice they were giving me credit for a royalty, or whatever they collected. It was so little I didn't pay any attention to it. During the period between 1936 and 1938, I only received small royalties on two occasions, despite the fact that in the course of that time I had sold in excess of \$20,000 worth of franchises. I never inquired as to why I had not received any royalties—I was not interested much in that; I was interested in getting my 20 per cent at the time I made the sale. (Tr. p. 796.)

After I became connected with Direct-U-Systems I was on the road quite a while and I must have made a number of sales. I sold Mr. Browne in August of 1938 for \$1500. I do not have any idea of the aggregate number of sales made and the aggregate amount—I never kept track. It seems to me that I closed the territory of Minnesota but I do not remember the man's name; I might have received \$500—I don't remember. I recall having, on November 30, 1938, sold Mr. James Gregory of Madison, Wisconsin, the territory known as Southern Wisconsin and the amount involved there, I suppose, was \$1500. (Tr. p. 798.)

I remember one E. J. Cheatham of Independence, Missouri. I sold him the west half of the State

(Testimony of Albert A. Martinez.)

of Missouri; as [107] to the amount involved, I don't remember. On April 11, 1939, to R. A. Burke, one of the witnesses here, I sold the territory of San Francisco for \$1500. In February of 1940, I contacted a man by the name of Clayborne Eason, Jr. of Amarillo, Texas, and sold him the territory known as the Texas Panhandle; the amount involved might have been \$750. Five days later, I sold Mr. Burke of Amarillo, Texas the territory of the State of Oklahoma—I suppose the amount involved was \$1500. I remember meeting Mr. J. E. Waggoner of Kansas City, Missouri, and sold him the northwest portion of the State of Missouri; I suppose the amount involved was \$1500. I may have sold M. A. Green at Franklin, Tennessee, the territory known as the State of Tennessee; as I say, I can't remember—I suppose that he was sold for the sum of \$1500. I do not remember the name of R. M. Lawless of New Orleans—I meet so many people. I would not say that I did not sell to him the territory of the State of Louisiana. If the records show that I did, I did. (Tr. p. 802.)

In each of these sales I used practically the same sales talk that was used in selling Mr. Burke. We just had one sales talk, you know; that is all we can do. (Tr. p. 802.)

To a certain extent I was familiar with the plan of operation of the Direct-U-Systems; I knew that they answered an ad, or else I wouldn't call on them. I never talked much about the ad—I would call them up and ask them if they got a letter from

(Testimony of Albert A. Martinez.)

the company, and that I was there and would like to show them the deal. I never referred to the ad when they got there, very seldom, unless they brought it up. The home office would send me the letters that these fellows had answered the ads. They would send me the letters, so when I would call them in I would ask them if that was their letter. Sure, I had the letters. They didn't give me a list, they just sent me the letters. I suppose the home office had written the prospective purchaser, I don't know. [108]

I have seen some of these letters. (Tr. p. 804.)

LLEWELLYN F. MARSH

called as a witness on behalf of the defendants, testified as follows:

I am one of the defendants in this case and was employed by the Direct-U-Systems in 1940 as a salesman. I was given a commission on the business that came out of the territory and paid my own expenses. I had a 35% commission. I had a miniature model which I used as a salesman. I never represented in any of my sales that the cabinet was patented but I had heard that the company was trying to get protection on the ro-tater. Nobody ever instructed me to make any misrepresentations and I never made any. I am sure the photographs of an installation in my kit was photographs of an actual one. I remember

(Testimony of Llewellyn F. Marsh.)

Mr. Barnes of Pasadena. Everything was completely outlined to him and he told me he had checked the company and some pretty nice things had been said about it; that he had a report from Dun and Bradstreet. I never had any correspondence with Mr. Schutt nor with Mr. Weeks nor any knowledge of any correspondence being carried on by Mr. Bergen and the company.

Cross Examination

By Mr. Veale:

I first met Mr. Marshall some time prior to 1935; at that time I was practicing law. I had a conversation with him as the result of which I went on the road for the National Directory Systems. I knew how they came in contact with their prospective purchasers. I was told an advertisement was to be sent out, run in papers, and then I was to contact them. If the advertisement brought any replies the prospective purchasers would be turned over to me. I had occasion from time to time to see those advertisements. Very often, the person who replied would paste the advertisement on his letter. I don't recall just exactly the wording of the ad but I think most all of the ads said \$6500, reasonably \$6500 expected, or something like that. I don't remember the [109] exact wording of the ads, but it was to the effect that you could reasonably expect \$6500. I had a 25 per cent arrangement with the National Systems, for compensation, and was to participate in the royalties to the extent of 25 per cent. As a result of my endeavors

(Testimony of Llewellyn F. Marsh.)

with the National Systems I made quite a few sales—I do not know how much. It doesn't seem to me as though I sold forty-five people, but if you have the records there, why, I suppose I did. I would just have to guess at the aggregate amount of sales in money that I made; it could be that the amount is in excess of \$55,000. If there were 45 sales, it could be, because most of the sales were \$1500, and ran over the period from December, 1935, through the year 1937. I severed my connection with the National Systems in February of 1938. Mr. Young became the owner of the National Systems and later Mr. Young and Mr. Bushnell formed a new company known as the Automatic Map Company, and I became associated with that. (Tr. p. 827.)

In that venture I received commission of straight 35 per cent and was to receive a percentage of the royalties. I was employed by that concern from about May, 1938, up to January 1, 1940, and sold quite a number of people the Automatic Map franchise. My recollection is that there were about 19, maybe 18 or maybe 20. I do not recall the aggregate amount of money involved in those sales, but since my memory has been refreshed, it could have been \$24,960. I did not receive any royalties from the National Directory Systems, and the same is true of the Automatic Map Company. (Tr. p. 829.)

In 1940, I became associated with the Direct-U-Systems. I made three sales, and one proposed

(Testimony of Llewellyn F. Marsh.)

sale—the aggregate amount of the sales was \$3750. My approach and manner of contact with the various purchasers in the Direct-U-Systems was practically identical with the Automatic Map Company, except that it had an added feature since we gave the subscribers for the space an additional card without charge. The Direct-U-Systems had marvelous equipment. (Tr. p. 833.) [110]

NORMAN H. MARSHALL

called as a witness on behalf of the defendants, testified as follows:

I am the Marshall named as the defendant in this indictment. I live in Los Angeles. I became interested in the directories at the inception of the National Directory Systems in 1935, but with the Direct-U-Systems when it was organized in 1938. I have always been interested in advertising and this is a unique advertising and required considerable development and I just worked at it. It was from my original idea that the bulletin board was as we see it here today and improvements were constantly sought on it by me. (P. 836) Every bit of money we could get hold of was used in improving the device and we spent many thousands of dollars on this. I have been in and out of activity with the Direct-U-Systems several times and in fact we shipped one installation about three weeks ago. While I was with the Direct-U-Sys-

(Testimony of Norman H. Marshall.)

tems I was the sales manager. These salesmen were instructed in detail with reference to this device. The salesmen were paid on commission which ran from 25% to 35% depending upon their expenses. We had leases on Canadian National hotels and were negotiating in Mexico. There were more than half a dozen salesmen altogether. The assembling of one of these devices required the services of different kinds of skilled workers. These cabinets were all individually built to suit the individual customer. We tried to make the cabinet match the hotel wood. We had credit with everyone. We were never turned down for credit, that I know of. We had credit with the Hollywood State Bank. However, none of the equipment was sold. The company retained title. (P. 845) We paid the expenses of shipping the machines which were sent either by express or truck. We were advised by attorneys that we had a right to put "Patent Pending" on the machine but as soon as we found out there was a question about it we quit it (P. 848) and we have never represented that it was patented. I never met Mr. [111] Weeks. (P. 850) But I did meet Mr. Wallace who was employed as a salesman. I do know that Mr. Weeks actually got installations of the machines and I know they worked although I never went to New York about it. I have seen this particular machine working satisfactorily in Minneapolis and Denver. Had I thought the machine was a fraud, I would not have had anything to do with it. I

(Testimony of Norman H. Marshall.)

met Mr. Schutt and his wife. (P. 854) I had one conference with them. They wanted their money back and it was explained to them that it was not the policy of the company to give the money back. No suit was ever filed against me or the company in connection with them. I met Mr. Whitby in Oakland and I explained the proposition to them. I never ordered any machines. I remember Mr. Burke and the upshot of our negotiations was that he entered into a repurchase agreement and we built a cabinet for him, installed it in the Sir Francis Drake Hotel and the company serviced it for over a year but he lost interest in this activity. Whenever we found any defects in this machine we endeavored in every instance to correct them. (P. 860) I talked to Inspector Edwards about patenting the machine, and told him certain parts of it could not be patented but I did tell him we were endeavoring to secure patents on the animator and paid a considerable amount of money to a patent attorney in Washington. The reason we had the verification form put on the contract was that we knew salesmen were inclined to elaborate upon things and the company tried to know for itself whether certain things had been called to the attention of the lessee. I never instructed any salesmen to nor approved of misrepresentations. (P. 865) We sent written instructions to lessees so that they might operate satisfactorily. We sent this document, (Defendant's Exhibit 3X to the lessees to enable them to make sales.

(Testimony of Norman H. Marshall.)

DEFENDANT'S EXHIBIT No. 3X

Sales Manuel
For
Direct-U-Systems

This sales manuel is a compilation of well known and seasoned Sales Principles to-gether with specific data on the method of selling the service of The Direct-U-Systems.

* * *

It is for the use of our Franchise Operators and Salesmen, that they may better acquaint the merchant with the many advantages to be found by the use of,—

Direct-U-Systems.

* * *

We do not suggest that our salesmen use the canvass as given herein as a sterotyped story, use the information But put it in your own verbage.

Distributed by
Direct-U-Systems, Inc.
Direct-U-Building
7225 Beverly Blvd.,
Hollywood, California.

D-15

To those of our salesmen who have had previous selling experience, Greetings;

To those of you who are about to embark on a new career, We Welcome You.

You are entering a field where every man has an equal opportunity, and where the heights to

(Testimony of Norman H. Marshall.)

Defendant's Exhibit No. 3X—(Continued)
which you attain are limited only by your own ambition and desire to succeed.

You are about to enter a profession whose members as a class, are the highest paid men on earth, The Specialty Service Salesmen.

There is no mysticism about selling. It is mostly common sense, knowledge of your product, presenting the facts in the proper manner to as many people each day as possible, the will to work and the desire to succeed.

* * *

We furnish you with the tools of your trade and instruct you in their use.

If you will but follow these instructions you will be happy and successful in your career, and satisfied with the niche you carve out for yourself.

* * *

You must know your product Thoroughly, study it constantly. Learn all you can about it, that you may become an expert in all things pertaining to it.

Sell yourself on its merits. Know that what you have to offer is of real benefit to your customer.

Remember that the man who tries to sell that in which he himself does not believe is Dishonest.

* * *

Many salesmen approach their prospect with an air of apology. They hesitate to take his time, and feel that an interview if granted, is a great favor conferred upon them. This is entirely wrong.

(Testimony of Norman H. Marshall.)

Defendant's Exhibit No. 3X—(Continued)

Yours is an honorable calling, and the work you are doing is of distinct benefit to your customer.

Ask yourself these questions:

"Why does the prospect maintain an office or conduct a business?"

"Why do I wish to talk to him?"

The answer to the first question is, "Because he wants to make money and for no other reason."

The answer to the second question is, "Because you want to tell him about something that will make or save him money."

Isn't that the very thing for which he maintains his store or office? If so why hesitate to call upon him when you are about to aid him in doing exactly what he is there for.

You wouldn't hesitate to call on him, no matter how busy he might be, if you wished to make a purchase, because he makes a profit on your purchase. In your case he makes the purchase from you, but he also makes a profit when he buys what you have to offer.

* * *

Once you have that knowledge firmly fixed in your mind, all fear and hesitation vanishes. The spirit of service enters into your conscientiousness and making calls becomes a pleasure. You are doing something for your customers, not to them.

* * *

Direct-U Salesmen are in a new business and

(Testimony of Norman H. Marshall.)

Defendant's Exhibit No. 3X—(Continued)
have no competition. They are making friends and building for themselves a permanent income.

* * *

Re-orders from your customers who, once sold, will never again be without Direct-U-System service means your future income is assured.

* * *

A salesman has been defined as “one who induces a person to buy something he does not want.” This is true in a sense and perfectly proper, provided the purchaser benefits thereby.

While it is true that most people do not know what they want, no one should ever be sold that for which he has no use, and which does not benefit him more than the money would if otherwise spent.

* * *

Nothing is worth selling that would not sell itself if all the facts were known and fully understood.

Therefore your job is to present the facts clearly and concisely.

Speak plainly and distinctly.

Be sure the prospect hears and understands all you say, for remember, it isn't what you say that makes the sale. It is what the prospect hears and understands of what you say.

* * *

The art of selling consists largely in the proper

(Testimony of Norman H. Marshall.)

Defendant's Exhibit No. 3X—(Continued)
presentation of your case. Which means you should present the facts in their proper sequence; each fact having its relation to the one preceding.

In this way the prospect's attention is held and his interest increased as you proceed with your story.

* * *

Never try to sell a prospect unless you have his undivided attention.

* * *

Keep a complete record of all calls made, and report these calls to your office.

This is a great benefit to the salesman in closing future business and in keeping close contact with the customer.

* * *

Systematize your work. Never start your day without knowing where you are going and upon whom you are going to call. Always lay out more calls for yourself than you really expect to make as some of them may be away or otherwise engaged.

Plan Your Work, Then Work Your Plan.

* * *

The salesman has three tools with which to work,—

First, A thorough knowledge of his product.

Second, The ability to present it in an attractive manner.

(Testimony of Norman H. Marshall.)

Defendant's Exhibit No. 3X—(Continued)

Third, Time in which to do so.

Don't Waste Time, either yours or your prospects.

Since Time Is Money, to waste your time is to waste your money.

* * *

The Merchandise you are selling.

The method of introduction of the subject to the prospect is dependent upon whether or not he has received a letter or is what is known as a "Cold Prospect".

If the former, the salesman introduces himself by name with the statement that he is with Mr. the local manager for the Direct-U-Systems.

"Mr. Blank, several days ago Mr. sent you a letter saying that I would call to show you an electric working model. (he will undoubtedly remember this letter as the mention of the working model excites his curiosity.)

(Don't let him hurry you.),—"can we sit down so that I may show you what I have and tell you all about our service?"

If he is too busy to sit down with you then, make a future definite appointment with him.

Be at all times courteous and in return Demand courtesy and a respectful interview. Get his undivided attention.

(Testimony of Norman H. Marshall.)

Defendant's Exhibit No. 3X—(Continued)

Thoroughly Familiarize Yourself With the
General Presentation

Which Follows.

Direct-U-Systems

Los Angeles, California

Sales Suggestions For Salesmen Soliciting
Merchants For Service On Direct-U-Systems

In this, we shall not attempt to make a dialogue as between merchant and salesman, feeling that such would perhaps fall short of its purpose and become a canned speech, which of course would lack sincerity and enthusiasm to properly impress.

The first thing we would suggest that a salesman do is thoroughly acquaint himself with the Service to be rendered by the D-U-S and, above all, get the idea out of mind that this Service is an "advertising" service. We have no quarrel with advertising. We believe that advertising is a splendid service—time honored and time proven. But we are not in it. If we were, we would work just as hard on it as we are working on this System. Our Service begins where advertising leaves off; but it is in no way conflicting with advertising. Advertising, we believe, is competitive and coercive—a stimulant to coax or to prevail on a certain group of people to spend more money, to spend it today instead of tomorrow, or to spend it with Jones instead of Brown or Smith. But, certainly, advertising can only be effectively directed when locally applied to a group of people who live in and

(Testimony of Norman H. Marshall.)

Defendant's Exhibit No. 3X—(Continued)
around a certain district from which the advertising emanates.

A buyer stimulated by advertising is presumed to know several things: he must know who is doing the advertising, the advertiser's responsibility and integrity, and, above all, he must know where this advertiser is located. Inasmuch as most local advertising is directed to people who live within his area, the presumption that the reader of the advertisement does know these things is usually more or less accurate. And if not accurate in every case, the individual living within the district has ample time sooner or later to learn the city and learn the location of these various merchants.

Therefore, advertising is presumed to do its job very well. We believe that it does. We believe that the proper amount of advertising is just as effective as an over-saturation of the territory. The purchases made by the local buyer are limited by his budget. If business is off 30% to 40% in the store of the local merchant, it usually means one thing: that the spending power of this buyer-group at which he is directing his advertising, is also off 30% to 40%. This being an economic condition, there is nothing that the merchant or ourselves can do to help him. Time alone will remedy this matter if it is to be remedied. Therefore, we do not go into an area with any idea at all of helping the merchant with his local trade. They know who he is and where he is. Nothing that we could

(Testimony of Norman H. Marshall.)

Defendant's Exhibit No. 3X—(Continued)

say would help him very much. But, inasmuch as our Service is entirely different, we are certainly not in competition to any of his advertising mediums and do not recommend that he substitute our Service for any of them. He is dealing with one group of people who know him and know the city. His only problem with them is to stimulate them to a point of buying from him and hope that the buyer has the money.

Our Service brings to light an entirely different buyer-group—strangers in his city, who remain strangers unless the merchant does something about it. These people will be in his city for only two or three days; sometimes a day; sometimes three or four; but an average of two days. This is altogether too short a time for the stranger through his own efforts to familiarize himself with the city. However, he is a buyer—qualified and classified. The fact that he is stopping at a good hotel proves that he has ready money. He is a ready, able and willing buyer—previously stimulated as to merchandise but not as to merchants. Since his needs are greater while away from home than at home, it follows that he spends more money while away from home. Since he is fortunate to have money to travel on, it also follows that he belongs to the higher spending group. And since he is away from home he must buy with cash. The principal exception to this, we believe, would be the individual who travels by automobile and carries a national

(Testimony of Norman H. Marshall.)

Defendant's Exhibit No. 3X—(Continued)
credit card with some one of the major oil companies. The rest of the merchants, however, sell him for cash.

If a merchant finds it profitable to spend thousands of dollars a year to stimulate the people who already know him, know where he is, know what he sells—just in order to get them into his store to buy (even though many of these people buy on time and he has many bad accounts)—he is spending that money merely for the privilege of announcing to the general public that he is a ready, able and willing seller.

How then, for a few cents a day, can he afford not to show a ready, able and willing buyer—a guest in his city who doesn't know where he, the merchant, is, what he has to sell and, most important of all, how to get there?

Our Service reaches this guest of his city where the guest lives—in the better hotels. We believe the merchant should, as a courtesy to the guests of his city, be willing to show them who and where he, the merchant, is. And, as a matter of profit he cannot afford not to do so.

(In your canvass to the merchant, you should strongly call his attention to several groups of figures. You will find these figures in our Selling Text.)

The figures referred to are not taken out of the air by us. As a matter of fact they are not compiled by us at all. One set of figures is obtained

(Testimony of Norman H. Marshall.)

Defendant's Exhibit No. 3X—(Continued)
from the American Automobile Association. The other set of figures is obtained from the hotel in which the D-U-S installation will be made. But the Proven Figures are these:

That there were over $4\frac{1}{2}$ billion dollars spent by automobile travelers during the past year of 1938. That is big business; that is a lot of money.

The merchant's attention should be called to the amount spent during a certain year by guests of the particular hotel wherein the Service is to be installed. This, you will find, we have broken down to so many dollars a day. This money is spent, or available to be spent, by ready, able and willing buyers a few doors or a few blocks from the merchant.

And they will buy if they can only find the merchant. This is Cash business. The D-U-S- in the hotel lobby will guide them directly to the merchant. Many merchants not being familiar with these figures will perhaps then say this: "Oh, well, the hotels get that money".

Here are statistics from the hotels themselves: The hotels do get 23%. However, the 23% has been deducted from the amount of money spent, and the \$7.14 as shown by us on Page 7 of our Selling Text, is the amount of money the buyer has to spend after he has paid the hotel. Then consider these figures:

(Testimony of Norman H. Marshall.)

Defendant's Exhibit No. 3X—(Continued)

Restaurants—get	18% of that amount
Retail Stores	31%
Garages	10%
Theaters	8%
Miscl. Items	10%

This 23% that the hotels get would be spread as per ratio over the other mentioned items herein. It can quickly be shown, by this table, to whatever merchant the canvass is made, how much money in dollars and cents he might reach for out of a daily total from the particular hotel in question.

In soliciting restaurants you probably will find that some will say, "Will we be exclusive on this Service?" Five or six eating places can be represented on one D-U-S—and yet each will be "exclusive." They come under the classifications of "Sea Food"—"Southern Cooking"—"Cafeteria"—"French-Italian Dinners"—"German Cooking"—"New England Dinners"—and a bang-up "Steak House". None of these is competitive to the other.

Automobile service comes in for their share of this business. It is not important to the traveler to know where the White Garage is or the name of any garage. What is important to him, however, is the location of the Cadillac, Packard, or Plymouth Service garage, or whatever type of car he is driving. All service companies benefit greatly from the traveler, provided he can find them. Many new cars have been sold through this Service; however we do not allege that we will sell automobiles, because we

(Testimony of Norman H. Marshall.)

Defendant's Exhibit No. 3X—(Continued)

do not know. We do know, however, that we will give them a great deal of automobile service.

Now for service stations—gasoline: Shell, Texaco, Standard, Richfield, Phillips and all of the other companies that issue national credit or courtesy cards, will be sought out by the traveling public who are carrying these cards. The same goes for merchandising houses, certain types of clothing, hats, shoes, women's clothing and certain professions also, such as a contract lawyer. Many people come to a city and go to the hotel before buying, selling, leasing or renting real estate. Others, such as a chiropodist, an oculist, turkish baths—and various other trades that the traveling public buy from are eligible on the Direct-U-Systems.

The salesman's presentation will of course be guided largely by the prospect he is working on. Were I to approach a man who was obviously in a hurry and it was impossible for me to quiet him down I would waste very little time on preliminaries but would start out with the number of dollars that are walking down the street within a few blocks of him, daily, which he is making no real effort to get. You'll find that by supplying these figures to the merchant that you have definitely done him a favor and started him thinking. Why doesn't he know the facts that you are about to tell him? Why? Because he hasn't been getting them. Salesmen, remember this! When you go into see a merchant, that merchant probably knows nothing at all

(Testimony of Norman H. Marshall.)

Defendant's Exhibit No. 3X—(Continued)

about what you are about to tell him, or what you represent. If he ever finds out, it will be because you, or someone else, tells him. If he never finds out, it is because you failed to tell him. You can certainly remember this, and believe it too: that the merchant doesn't live who is spending hundreds and thousands of dollars to stay in business, who wouldn't spend a few cents a day to deliver into his store another group of buyers whom he is not now reaching. Your only job is to convince him of these facts. And once you have told the story completely and clearly you will find your merchant will want to believe them. His only difficulty perhaps is that it sounds a little too good to be true. We all want to believe the better things, but sometimes their presentation does violence to our intelligence.

Let us work on the theory that you are not really trying to sell the merchant at all—that it should not be necessary for you to sell him. Your job is to explain the way this System works, and for whom it works, and the amount of money involved. From that time on the merchant should be a "buyer". But if you do have to "sell" him, you should sell him with one idea in mind, namely: that no matter how much work and pressure you have to use on him, he's certainly never going to be worse off for it. You have definitely benefited him. At about this time in your presentation it is well to show how this System works, because we are presumed at this time to have convinced the merchant of several things: that his field offers more than he is cultivating; that

(Testimony of Norman H. Marshall.)

Defendant's Exhibit No. 3X—(Continued)

there is a large sum of money being spent annually in his city by guests of the particular hotel that you are representing; or if it is not being spent in his city, it is available to be spent; and if it moves on to another city, it is because he failed to grasp the opportunity when the opportunity was there.

When the merchant coaxes the local buyer in by inducement, and has got the money that this local buyer had to spend, this local individual must then wait until his purchasing budget is replenished through his own or other resources. In other words, he is not a ready, willing and able buyer daily—but occasionally; whereas, this group that we represent is composed of individuals who buy and leave town and who are replaced by other individuals who also buy and leave—and it is a constant source of new money to the local businessman.

We have taken up so much time explaining what we do, that how we do it may sound complicated. However, this is the simplest part of it all. There is nothing very new about the methods employed toward arriving at the Service we supply. We use a map. (Maps have been in use centuries, with popularity ever increasing.) Our map is hand-drawn and drawn to scale. It is black on white, showing nothing but names of streets and boulevards. The map is large and clear enough that it can be read at a distance of fifteen feet. Be assured that there are none others in the city like it. The area shown on the map has for its "hub" the hotel

(Testimony of Norman H. Marshall.)

Defendant's Exhibit No. 3X—(Continued)
in which the D-U-S is located—supplying our Service to surrounding eligible merchants who are easily accessible to the guests of the hotel.

When you use a map for directing yourself, it is necessary to do two things: first, locate yourself on the map. Second, locate your point of destination. You must find the exact spot on the map where you are now located; otherwise it is difficult to locate any other place in relation to yourself on the map.

Our map locates the hotel for the guest by using a Red light, which is the exact location on the map of the hotel wherein the Direct-U-Systems located. For the various merchants represented thereon to whom the service has been sold, we also have a light. This light is white. We have now done two things that are necessary to do on any map—locate the point of departure and the point of destination.

However, the lights on the map are not visible until a button is pressed opposite a large card. On this card, the merchant served has his representation. It shows his name and where he is. In the upper left hand corner of the card, in a different color to make it stand out, is shown the "leader" of the merchant. For instance, one brand of clothes he sells—perhaps Hickey-Freeman clothes. Another merchant sells Hart-Schaffner and Marx or Fashion Park. For cafes different types of food would be shown in this "key" position on the card . . . sea foods and so on. For garages we would show in this corner "Plymouth Service" "Chevrolet"—

(Testimony of Norman H. Marshall.)

Defendant's Exhibit No. 3X—(Continued)

"Cadillac"—"Packard". For the gasoline stations, we would show "Shell", "Texaco", "Phillips", and so on.

Now, when the button is pressed opposite any of these cards (and here you show your merchant your demonstrator and how it works) two lights flash and shine through the map, the green light representing where he stands, the white light being the place he chooses to find. Very easy then for him to trace his way on a large map, unobscured by a lot of other markings. We virtually deliver the buyer to the store or the place of business of the service or merchandise that he seeks. Now we differ from advertising in this respect: we make no effort on this map to state that one merchant is better than another. They are all good or they wouldn't be on there, having all been approved by the hotel itself. We merely show what the merchant does, where he is and more important, how to get there by use of a map, without advertising at all.

To make this map still more attractive and desirable, we mount it in a cabinet—the finest cabinet we can build . . . as fine as any radio cabinet. The designs are attractive and the woodwork matches the hotel lobby, or compliments the lobby, as the hotel may direct. This map is on a line with the average person's vision. Large White Cut-out Letters illuminated by Lumiline electrical indirect lighting equipment state what this map is. Its appearance and the lights flashing by users of the map will

(Testimony of Norman H. Marshall.)

Defendant's Exhibit No. 3X—(Continued)
positively pull the traffic in the hotel lobby directly to it.

Any merchant that tells you, "Well, I am represented in that hotel; I am paying so much for such and such a service and it is similar", is misinformed. Do not let him be misinformed. He may have a space on a map. It is not an animated map, we know. He may have space in the room, he may have space on the hotel blotters, or he may have cards in the lobby. This, you can easily show him is the very same thing he is doing with his local people, and probably would be effective if these people in the hotel knew his city. If they don't, then it is not serviceable to them. Our Service being animated and on a map with lights, does not seek to get people to buy from him, but shows the buyer where to find him. His advertising in the hotel does not interfere with our Service at all. He may, through those other mediums, sell a buyer on trying to find him; we show this buyer where the merchant is.

We give a further service by having the hotel clerks and porters refer inquiries to the map . . . also place cards in the rooms, not seeking to get an individual to buy from the local merchants, but pointing out to this buyer that the hotel has installed a service for his convenience—an automatic map, which will show him how to find his way about the city. Nothing to offend or coerce this buyer in any way; nothing that would indicate to him that it is advertising.

(Testimony of Norman H. Marshall.)

Defendant's Exhibit No. 3X—(Continued)

Countless additional pages could be written on this Service—and we haven't a doubt but that you enterprising salesmen will add to it. Remember this: that there is not one single objection that will survive in the face of logical explanation of this System. It is not competitive; not coercive; but definitely helpful.

“Mr., before I show you what I have here, (meaning demonstrator) I want to tell you a fact. (turn to page of the statistics where it shows 31% being spent by the traveling public): Did you know that 31 percent of all monies spent by travelers is spent in retail stores. Think of this, nearly a third of all the money spent by travelers is spent in retail stores and comes from the people who travel and live in hotels and you have no other method of reaching them or causing them to be directed to you.

“Well, Mr., that's exactly what we can do and here is how we do it: This demonstrator is the replica of an actual cabinet. Of course, the cabinet itself is 7 feet high and four feet wide. It is an animated and beautiful piece of furniture, finished in the very latest design and in keeping with the finishing of the hotel lobby. Up here at the top and center is a map of this city, it runs for approximately 40 blocks north and south and 40 blocks east and west. It is electrified and works twenty-four hours each day for you.

“Down the sides here are the listings of only the

(Testimony of Norman H. Marshall.)

Defendant's Exhibit No. 3X—(Continued)

better business houses and professional men in this city. Now, opposite each listing is a button. When any one of these buttons is pushed (demonstrate) two lights illuminate back of the map, the red light shows where the hotel is located and the white light shows your place of business.

"You are entitled to an 8x10 interchangeable card which changes every 20 seconds and all of the reading matter is changed every month, so that all of your animated display cards are timely and you are displaying from month to month that merchandise which you most want to feature at that particular season.

"Now we place one of these cards (show card in kit) in each room in the hotel calling the guest's attention to the fact that the Hotel has placed this electric city directory in the lobby for the convenience of its guests. In other words, Mr., the Hotel and its employees are recommending you as the most outstanding business in your line in this city. You see, Mr., this is sold on an exclusive basis, and we feel you are the most outstanding drug store in

"You, as a merchant, spend many dollars each year for newspaper advertising and it is very good. But still it does not reach the traveling public because the average stranger does not read the local papers, he reads only his home town paper or the big city sheet, but Direct-U-Systems is not advertising but is a service and does not supplant adver-

(Testimony of Norman H. Marshall.)

Defendant's Exhibit No. 3X—(Continued)

tising. Direct-U-Systems is ethical, exclusive, new and modern. It not only displays for you in the lobby of the hotel that merchandise which you want it to, But it actually directs people to your store.

What other form of representation can you purchase for anything like the price that this is being sold for?

“Statistics show us that any first class hotel is on an average 80% filled or occupied all the year round, we further find that for every guest that is registered in a hotel that five persons visit that lobby every day for one reason or another, to go to lunch, to call on a guest, to buy a newspaper, to use the phone or for one of a dozen reasons: so then here are some astounding figures.

1/5 of population Support 9/10 of all retail Business.

Hotel Guests are of this Fortunate Fifth.

Direct-U-Systems service reaches this Fortunate Fifth 100%. No wasted effort, thus giving the subscriber another 5 times as much value as general coverage.

4/5 of hotel guests are Transient—Strangers—Not reached by any local Advertising Medium. Direct-U-Systems reaches these strangers 100%—Thus giving the subscriber another 5 times in value over any type of local medium.

“Now, Mr., how do you want me to list you, as drugs only, or as drugs and sundries, or just what is your choice.”

(Testimony of Norman H. Marshall.)

Defendant's Exhibit No. 3X—(Continued)

If he has any objection, it is an indication of a bad canvass. The proper time to answer objections is before they come up. Know the most common objections, then put them in your canvass and answer them as you go along.

If an unforeseen or new objection comes up at the end of a canvass, it is a distinct advantage to the salesman. It shows him that the prospect is really interested in what is being told him and is giving the matter deep thought, evidenced by the very fact that he thought up this new objection. It also tells the salesman what is holding the prospect back from buying. The salesman can then overcome this. Get it out of the way and close the sale.

Closing Arguments

“You can't afford to be without this, Mr. Can you afford to let some other competitor get the benefit of this novel and up-to-date method of reaching the traveler?

“Do you know Mr., it has been demonstrated on many occasions that people who have pushed these buttons have been known to walk right by other good stores in the same line of business to go to the store that the directory has sent them to. In other words, they have their minds focused on a certain store and that's where they will go; where the directory has sent them, because first, they know it must be a good store or the hotel would not recommend it.

(Testimony of Norman H. Marshall.)

Defendant's Exhibit No. 3X—(Continued)

“You have an up-to-minute store, everything is well laid out and your displays are lovely. I want to give you the opportunity of being in the Hotel and I know that as time goes on and you see the results obtained you will thank me for bringing this to your attention.”

To the Man Who Says,

I can't afford it.

Your answer is: You can't afford to be without it, Mr., you can't afford to pass up anything that will increase your business. (refer to proven facts.)

I'll think it over.

That's exactly what I want you to do Mr. and I want you to think it over while I'm here, so I can answer any questions you might like to ask.

This is my off season, business is too bad right now.

Then this is just the time you need it most. When business is bad, that is the time you've got to do something about it to improve it. Now that's logic isn't it, Mr.

These are a few of the most commonly met objections. There are no Objections which cannot be overcome because Direct-U-Systems do for the merchant what no other medium can do? It sends customers directly to his place of business.

(Testimony of Norman H. Marshall.)

Defendant's Exhibit No. 3X—(Continued)

In closing let us admonish you, to work hard, take your business seriously, study the thing you are selling, know it, know all the objections and how to answer them.

Read over your sales suggestions even after you have been successfully selling "listings", it will refresh your memory of things which you may have forgotten and help you close sales.

Remember at all times that you are not selling advertising, but you are offering an exclusive service that reaches the concentrated class of people who have money to spend and are strangers in the community and can be reached in no other way.

[Endorsed]: Filed Sept. 29, 1942.

We made a conscientious and honest effort to aid them and we never failed to ship any equipment which was ordered. Repurchase agreements were made and paid off. Mr. Burke received his money back and a number of people received a [112] goodly portion of their money. (P. 871) If a certain territory was allotted to a certain lessee, we did not go in afterwards and enter into competition against him. I never intended to nor did I ever have an agreement with anyone whereby anyone was sought to be defrauded.

Cross Examination

By Mr. Veale:

The Evansville, Indiana, installation is one that

(Testimony of Norman H. Marshall.)

has just recently been made. I would say that that customer was satisfied. He had the equipment shipped to him and he sent me contracts showing that he had sold the space. I don't know whether thirty of the spaces had been donated as places of interest and that twenty-nine paid ads had been sold with nothing paid on them. I do know that the only way they could get a lease on the hotel was that there would be thirty places of interest in there. I do not remember when the board was ordered—I do not think it was ordered three or four or five months ago; it might have been. We ran into a lot of difficulties because we couldn't get priorities. The installation in Denver is one that I supervised the installation of—that has been since the return of this indictment. (Tr. p. 874.)

I don't know whether up to the present time thirteen of the twenty-nine advertising spaces sold on that board have not been paid upon—it is not the first instance we have had where every installation hasn't been paid in. I put in the installation at Minneapolis in the Hotel Nicolette, and I am fairly familiar with the file. Up to this date, no royalties have been received on any of these installations. (Tr. p. 876.)

I contend that all of Mr. Weeks' installations were successful. As regards Mr. Schutt, I had had a considerable amount of correspondence with him before he came to Los Angeles; I handled most of that correspondence, signing the name of Mr. Talbott, which I had done in practically every instance. (Tr. p. 877.)

(Testimony of Norman H. Marshall.)

When Mr. and Mrs. Schutt came to Los Angeles, it was not [113] a new transaction to me. They had agreed to sign a repurchase agreement—he had refused and agreed at different times. Mr. Schutt was never repaid his \$1500. Mr. Whitby signed a repurchase agreement but he has not yet received 100 cents on the dollar. Mr. Burke has received only \$500. He signed a repurchase agreement and has received that much money on it; the balance due him is still outstanding. (Tr. p. 879.)

I prepared Government's Exhibit 25 for Mr. Wallace and gave it to him. He told me he had to have something he could memorize and I suggested that he use it as a basis for making up his own sales talk. I carried on quite a great deal of correspondence with Mr. Weeks, most all of the letters being signed "C. W. Talbott." I wrote a letter dated August 8, 1940, to Mr. Weeks, which letter contained the following paragraph: (Government's Exhibit No. 8)

"As far as N. H. Marshall is concerned, he is not employed by us nor has he been, but is well known by us, as he was at the time the old National was operating, most successful, as the financial records will show. It was when he handled the sales and through his efforts and knowledge and hard work the most successful development was done, not only by the company but by the lessees. When he left the old National due to some personal and domestic difficulties, their decline started and when it reached a point that the writer did not care to be associated

(Testimony of Norman H. Marshall.)

he disposed of his interest and the old investors realized that they had made a mistake. And we are sure that if you knew him we are sure that you would agree. He is interested in some educational business, but we are sure that if you will write him addressed to him Post Office, Hollywood, California, that it will be [114] forwarded to him and he will, we feel, be more than glad to assist in rectifying any reports that may be damaging to you or this company."

That letter was shown to me before it left; in fact, it was left for me and I signed it. (Tr. pp. 881, 882.) Mr. Johnstone didn't handle a great deal of the business. I signed his name on a number of letters, but never without his consent. In some instances he saw these letters, and in every instance we discussed them. (Tr. pp. 884, 885.)

Whereupon the following occurred and the following stipulation was agreed upon:

"Mr. Stoddard: At this time, if the court please, counsel and myself have agreed as to what a witness, if called, would testify. I wrote it up right there in the form of a short stipulation. We do not expect to file a written stipulation, but I think that counsel and I are satisfied with the form of the stipulation. It concerns the testimony of one Roland R. Bryant, whose name has been mentioned here as one of the sales managers on the road and I may state to your Honor that he is now employed by a railroad and in some defense work and works seven days a week,

and we felt it would be unfair to him and his employer to bring him in here.

"Counsel have been very generous and agreed that if Roland R. Bryant, the witness referred to, I believe by Mr. Bergen, were to be called and sworn—in all fairness I think I should state to the jury that counsel and I understand [115] the stipulation is merely that that was the way he would testify, without counsel——

"Mr. Veale: That is correct.

"Mr. Stoddard: ——assuming that it is true or untrue. That is for the jury to determine. That in the year 1940 and '41 he was employed as a division manager of the Direct-U-Systems, and as such negotiated two contracts with Ralph H. Bergen; that the witness would further testify that he did not tell Bergen that there were 60 Direct-U-Systems boards in successful operation in the United States; but on the contrary, that he told the said Bergen that he understood that there were 24 more such boards installed at different places; that he did not, of his own knowledge, misrepresent either the said equipment or the said Direct-U-Systems deal; that he at no time represented the said equipment to be patented.

"With that stipulation——

"The Court: Do you accept the stipulation?

"Mr. Veale: We accept the stipulation.

"The Court: Gentlemen, that stipulation has the same effect as if Mr. Bryant were here and would testify as they have stipulated."

Whereupon the defendants rested (P. 890) and no rebuttal was introduced by the Government.

Whereupon motions by the defendants for a directed verdict of not guilty were renewed. Said motions as to each defendant were denied and an exception noted.

AMES PETERSON

Attorney for defendant Norman H. Marshall [116]

Wherefore, it is respectfully prayed that the Bill of Exceptions proposed by the defendant be amended as above outlined.

LEO V. SILVERSTEIN

United States Attorney

CHARLES H. VEALE

Chas. H. Veale

Asst. United States Attorney

The above and foregoing Bill of Exceptions is this day settled and approved.

Dated: December 28, 1942.

BEN HARRISON

United States District Judge
[117]

[Endorsed]: Lodged Dec. 14, 1942. Edmund L. Smith, Clerk. By [Illegible] Hames, Deputy Clerk.

[Endorsed]: Filed Dec. 28, 1942. Edmund L. Smith, Clerk. By W. C. Hart, Deputy Clerk.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 46, inclusive, contain full, true and correct copies of: Indictment; Minute Order entered August 7, 1941; Portion of Minute Order entered September 30, 1942; Verdict as to Defendant Norman H. Marshall; Portion of Minute Order entered October 26, 1942; Judgment and Commitment; Notice of Appeal; Bail Bond on Appeal; Stipulation; Stipulation and Order in re Exhibits and Praecipe which, together with the Original Bill of Exceptions, Assignment of Errors and Exhibits, transmitted herewith, constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the fees of the clerk for comparing, correcting and certifying the foregoing record amount to \$12.05 which sum has been paid to me by Appellant.

Witness my hand and the seal of the said District Court this 22 day of January, A. D. 1943.

[Seal]

EDMUND L. SMITH,

Clerk

By THEODORE HOCKE

Deputy Clerk

GOVERNMENT'S EXHIBIT No. 3

Cut of Allied Member AHA

Pencil notation Weeks

Direct-U-Systems

"An International Service"

C. S. Wallace

Division Manager

Hollywood

[Endorsed]: Filed 9/21/42.

GOVERNMENT'S EXHIBIT No. 6

Direct-U-Systems

General Offices

301 N. Laurel Ave.

Los Angeles, California

August 2, 1939

Mr. Harold E. Weeks

11 West 42nd Street

New York City, N. Y.

Dear Mr. Weeks:

We wish to acknowledge receipt of your favor approving the type and kind of stationery. We are rushing this equipment through without delay, so that when we receive your list we will have everything in readiness, as we are extremely anxious to get you established without delay.

We are very happy to hear that Mr. Wallace has been so helpful. We think a great deal of

Mr. Wallace, who has been with us for quite some time, and we are confident that he will render every assistance that is possible, in order to get you started.

We note what you say with reference to the elevated, and you may rest assured that we will very carefully check this before completing the maps, and we feel sure that with your cooperation, it will work out to a very distinct advantage.

We are also in receipt today of your check in the amount of \$3750 as covered by the contract, and we wish to take this opportunity of assuring you of our desire to cooperate with you in every way possible to insure your success.

We feel confident that you will develop your division to be outstanding, and we trust that you will advise us if there is any way we can assist, and we always appreciate any suggestions that you may have to make.

With kindest personal regards we are,

Very truly yours,

DIRECT-U-SYSTEMS

By C W TALBOTT

[Stamped]: Received Aug-4 1939 9 AM Ans'd
Aug-4 1939

T/F

Cut of Allied Member AHA

An International Service

[Endorsed]: Filed 9/21/42.

GOVERNMENT'S EXHIBIT No. 10

Western Union Telegram

[Stamped] File Copy

October 11, 1939

To Direct U Systems

Street and No. 301 North Laurel Avenue

Place Los Angeles, California

Am Anxious to Demonstrate Walnut Finished Cabinet at National Hotel Exposition November Thirteen to Seventeen Stop If I have Your Map Marked for Locations of Sixty Bonafide and Prospective Advertisers and Twelve Points of Interest Also Complete Information for Printing Narrow Cards in Your Hands by October Sixteen Can You Deliver Cabinet at Grand Central Palace Manhattan November Tenth Stop Will Furnish Eight by Ten Cards Here Stop Best Regards

HAROLD E. WEEKS

Western Union Telegram

1939 Oct 12 AM 1 37

SA1139 25 Nt—LosAngeles Calif 11

Harold E Weeks—

11 West 42 St Nyk—

Retel Will Rush Walnut System Confident Be Able Deliver on Time Please Rush Suggestions on Map Sent You Also Printing and Location Data Writing Regards—

DIRECT-U-SYSTEMS.

[Stamped]: Received Oct 12 1939 Ans'd -----

[Endorsed]: Filed 9/21/42.

GOVERNMENT'S EXHIBIT No. 12

Longacre 5—2947 7482 11 West 42nd Street
New York City

Harold E. Weeks
Franchise Operator
Direct-U-Systems
“An International Service”

December 9, 1939

Direct-U-Systems
7225 Beverly Boulevard
Los Angeles, California

Re: Cabinet for the Park Central Hotel.

Attention: Mr. C. W. Talbott

Gentlemen:

The walnut cabinet for the Park Central Hotel was exhibited from November 13 to 17 inclusive, at the National Hotel Exposition, as you know. Since then I have been trying it out here for nearly three weeks.

At the Exposition, the red light and the “Direct-U-Systems” lights remained on when the battery switch was closed. This condition necessitated my using four (4) sets of dry cells during the Exposition. Later, an investigation discovered a short circuit in the relay due to solder having been dropped into it from above. I have had the relay repaired, and it is now functioning satisfactorily.

It was necessary for me to have many cards made over, due to the fact that your office told me to cut them down from 8" to 7½" in height. Your

attention is called to the fact that the glass area in the wooden window in front of the movable cards is framed to 7" x 9½", on the inside. Further, I report that the aperture on the metal window is 6¾", by slightly over 9½". A person six feet tall, standing three feet in front of the middle of the cabinet, can see a card area of only 6½" x 9½". If the spring clips are bent in, so that they touch the glass on the bottom, in accordance with written instructions found in the cabinet when it was received, the window aperture, at the bottom, is cut down to 9".

The contracts which you sent me and other information received from you, indicated that the advertising card was to be 8" x 10". This information was given to the prospective advertisers, and they, my salesmen, and myself, were led to believe that the space available for copy on these cards was 8" x 10". As the visible space on the card is approximately 6½" x 9½", I consider that a gross injustice has occurred, inadvertently probably, because I have signed contracts with customers for advertisements 8" x 10" in size. Further, endeavoring to explain and correct this has caused me a great deal of embarrassment, expense, and loss of time that I personally should have been able to devote to other matters.

Nearly every card will have to be re-drawn, so as to bring the copy within an area of about 6" x 8½", in order that it may look well in the frame that you have provided.

Additional embarrassment has been caused, as previously referred to you, in connection with the weight of the cards used.

On many occasions two cards have run through the machine together, suggesting trouble from frictional static. This has been prevalent in other machines of your general type.

The aluminum roller under the lower front window roller is about $\frac{1}{8}$ " too short and has dropped out of its bearings, damaging cards, and jamming the machine. This has happened on a number of occasions at the National Hotel Exposition and subsequently, here in my office. I have endeavored to rectify this condition by having a mechanic extend the hole for the bolt which holds the brass bearing toward the center of the machine, and by soldering the bearing to the frame.

The whole frame, being made of galvanized sheet iron, seems to be flimsy and the rod still drops out. I note that this sheet metal frame has a number of holes drilled in it which have not been used, has indications of parts having been soldered to it which have later been removed, and I further note that spring guides have been installed and later removed, with rough vestiges of solder left on the brass sloping guides on the upper rear part of the machine. In plain words, this looks like an experimental article and not one that is in production.

The galvanized sheet metal frame is cutting into the metal shafts holding the wooden rollers, grooving these shafts. Suitable bearings of some sort should have been installed for these shafts.

Dirt from the spring coiled belts, on the upper front wooden rollers, so soiled the cards at the Exposition that I had to stop running the machine and go over most of the cards. Some of this dirt might have been paint or tempera from the front of the cards.

Some of the lights for the locations of stores, etc., give two or three indications less brightly illuminated in addition to the correct one, showing that light gets from the hole that it is intended to go through, sideways or otherwise, into adjoining holes. Such an instance occurs in the lights around the Grand Central Terminal. Some of the holes for the locations were wrongly placed, for example, that of my own office. I have had to have these corrected.

The lower push buttons and directory cards on either side of the cabinet are too low for the average individual to read or operate, causing an awkward position in holding the button on, and endeavoring to locate the light on the map. In order to overcome this I had a wooden base made for insertion under the cabinet, raising the cabinet 8". In the opinion of all who have seen this, it has materially improved the aspect of the cabinet, and made is more convenient for people to operate.

The left hand (viewed from the front of the cabinet) vertical board, or rack, for holding the white celluloid cards has bellied or warped inward to a marked degree. If this continues it will have to be replaced.

I note that most of the white celluloid directory

cards bow outwards toward the front of the cabinet, due to the fact that they are a trifle too high. This tends to throw a shadow on the information at the bottom of the cards, and also to slope the bottom of the cards so as to make it difficult for observers to read those cards near the bottom of the cabinet.

While the white celluloid cards have a very nice appearance, they tend to reflect, as mirrors, any lights at the front of the cabinet and give a bad glare. I recommend that a dull white surface be used in the future, or that consideration be given to white letters on a dull black background. The matter of glare and reflections is a particularly serious one in the Park Central Hotel in the location accepted in the contract by Mr. Wallace. This glare is caused by an illuminated "Western Union" sign opposite the cabinet location. The lobby is very poorly lighted and we will have to add lights to the cabinet to make it possible for all to read the directory cards, and possibly the map.

The fact that the movable cards are so far recessed from the front of the cabinet causes a bad shadow for $1\frac{1}{2}$ " or more on the top of the card, and it becomes very necessary to illuminate these cards. In all future cabinets, thought should be given to insure that the cards appear as near the front glass on the cabinet as possible.

I had to purchase an "Inverter" to use with your A. C. motor which drives the "movable exhibitor", at this office and at the Park Central Hotel, because the electricity supply is Direct Current at both of these locations.

Before I went into this venture with your company, I asked Mr. Wallace how many installations of Direct-U-Systems cabinets were in use. He said he did not know but he believed that there were about thirty (30). Later, in the presence of seven men who were undergoing training as salesmen, someone asked him this question, and he stated that there were about thirty (30) such installations.

Our experiences during the last four weeks with your Direct-U-Systems cabinet has been very disheartening to me and my representatives. It looks as though the "movable exhibitor" had by no means been perfected, and is by no means reliable. I have had it running for four or five hours, on numerous occasions, using a given set of cards, in a manner which appeared to be satisfactory, only to have the aluminum roller drop out or something jam. Hence I am at a loss to understand how such a contrivance can be operating successfully in about thirty (30) installations. I feel that we have been misled. When I have sought to learn where these locations are, your office has refused to tell me.

Please remember that I am a Professional Engineer and that my engineering practice covers a period of over 30 years. I have waited four weeks, during which time I have spent many hours observing the operation of your device, before I have written this letter, hence my conclusions are not those of any snap judgment. Your design is satisfactory but some parts are not.

I realize that you rushed this cabinet to completion for me in a very short time but that is posi-

tively no excuse for any such movable exhibitor being delivered as the one you sent. These machines should cause you and me no doubts and no worries. A test with blank cards of a different weight and size than the one you approved is inconclusive over any period of time.

Please manufacture a sturdy, reliable machine with suitable bearings and parts, and send it to me at your earliest convenience, so that I may put it in the cabinet at the Park Central Hotel, and not have to worry about this matter any longer.

With best regards,

Sincerely yours,

HAROLD S. WEEKS.

[Endorsed]: Filed Sept. 22, 1942.

NO. 100208
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT
FILED

14988-Bkr
Mkr
Jampas et al
21
81 8 2 1942
Mkr

JAN 27 1943

PAUL P. O'BRIEN,
CLERK

AN INTERNATIONAL SERVICE

3. To the Hotel Selected for a DIRECT-U-SYSTEM Installation.

By rendering an unusual, animated and unique service to its guests which they easily understand and appreciate and stands for a mark of distinction in the service they furnish.

By rendering such service to its guests it saves a great deal of time for the clerks in answering questions and giving directions and at the same time saving the guest the embarrassment in asking. Relieves the clerks so they may attend to other or additional duties.

By assisting the guest locate interesting places of interest in the city a civic betterment.

By assisting their guest in the selection of the outstanding merchant and professional men in the community—thereby protecting the guest.

By adding not only an outstanding and beneficial service but adds distinction to their lobby by the addition of a beautiful and impressive piece of furnishing designed to harmonize with and built to the individual decor of its lobby.

DIRECT-U SYSTEMS pay cash dividends in the form of cash lease rentals in addition to permitting the Hotel to render the above services to their guests.

THE COMPANY

The DIRECT-U SYSTEMS is the outstanding designer and builder of electrical services and systems.

DIRECT-U SYSTEMS is financially sound, enjoys an enviable position in the industry, unlimited credit standing and well rated with the commercial agencies and banks.

THIS YOUR GUARANTEE OF SERVICE AND CONTINUOUS OPERATION

Others have attempted to imitate DIRECT-U SYSTEMS in the detriment of the Traveler, the Merchant and Professional Man—and the public.

NONE can furnish the exclusive features of DIRECT-U SYSTEMS

DIRECT-U SYSTEMS are members of Chambers of Commerce Associations and is an affiliate member of the American Hotel Association, and at which an inviolable of their standing and their members in the Hotel and Traveling Industry.

Others may be a member of the Hotel and Traveling Industry but they cannot furnish the exclusive features of DIRECT-U SYSTEMS.
This is not a matter of time but a matter of fact.

FOR FULL INFORMATION
CALL

HAROLD E. WEEKS
NEW YORK REPRESENTATIVE

11 WEST 42nd STREET

Longcase 5-7489



DIRECT-U-SYSTEMS

General Offices
DIRECT U BUILDING
NEW YORK NEW YORK
NEW YORK NEW YORK

DIRECT-U-SYSTEMS

DIRECT-U-SYSTEMS USES

...To provide an automatic, instant and graphic means through which a traveler—typically, the guest of a hotel—may be directed in a simple, intelligent and unique method direct from where he is to any desired destination.

...To furnish an animated and automatic change of 8 x 10 photographs, news bulletins, announcements, advertisements in a new and protected method—furnishing a change of announcements approximately every ten seconds—and permitting a change of copy as often as desired.

DIRECT-U-SYSTEMS OPERATION

...On the opposite page is pictured a typical DIRECT-U-SYSTEMS installation. In the center is a large scale hand drawn map showing the streets and the block numbers of the city in which the DIRECT-U-SYSTEM is located.

...On either side of this map, in position for easy reference, are listings, classified for ease of selection—points of interest, shops, public buildings, theaters, memorials, parks, etc.

...Opposite each listing is a button, which when pressed causes two lights to shine through the map—one spot is red designating the exact location of the DIRECT-U-SYSTEM installed in the Hotel or where the stranger is now standing—

...The other light is white and designates the exact location of the address on the card or listing and is the desired destination of the user.

...The traveler or Hotel guest can readily visualize the route he must follow to arrive at the desired destination. The user immediately visualizes that his destination is so many blocks to the right and then to the left, etc.

DIRECT-U-SYSTEMS SERVICES

1. To the Traveler—the Hotel Guest or Stranger in Town.

...By assisting him reach any desired location in a simple, direct and intelligent manner; including the location of the outstanding merchants and professional men in the community, with virtually a guarantee of their responsibility, as well as places of interest, public buildings, parks, etc.

2. To the Merchant and Professional Man.

...By affording him an opportunity to reach a class of people—conceded to be 95% in the upper spending brackets—the class he is most desirous of reaching—in a dignified, unique manner. There is no other medium that will reach this class of people. This class pay cash and can afford to buy the best and all credit, exchange or bargain losses are eliminated.

...It offers more money-spending circulation per dollar than any other medium can offer and we are in position to verify this.

...It affords the merchant or professional man selected to represent his respective line of endeavor an exclusiveness that no other service offers.



DIRECT-U-SYSTEMS

GOVERNMENT'S EXHIBIT No. 22

CHelsea 2—7160 7161

160 Fifth Avenue
New York City
40-066

Harold E. Weeks
Franchise Operator
Direct-U-Systems
“An International Service”

December 21, 1940

Direct-U-Systems
7225 Beverly Boulevard
Los Angeles, California

Gentlemen:

Enclosed herewith please find complete statement which indicates every contract which has been made in connection with all five Direct-U-Systems cabinets up to the present date.

This tabulation shows the date of receipt and the amount of each payment in connection with each of these contracts.

Referring to the first paragraph in your letter of December 6, 1940, in connection with your bill for the second year's rental for the installation in the Park Central Hotel, please note that in your contract paragraph two reads: “(2). The second and succeeding years each 60 space system shall be \$250.00 per year and \$166.67 for 40 space Direct-U-Systems, payable upon installation and collection.” Please note also that paragraph six reads: “(6). Lessor agrees to furnish and install each system

complete and maintain same at its own expense during the life of the agreement.”

You did not furnish the Park Central Hotel Direct-U-Systems complete until a motor which would operate on DC current was received here on June 10, 1940. The two previous motors would not run on the current furnished in the lobby of the Hotel, if it had not been that I purchased an inverter and installed the same at my own expense, for which I have never been reimbursed. Therefore, the inverter was never installed at your expense and the installation was never furnished complete by you prior to June 10, 1940.

According to your paragraph one—(1)—in the contract, the \$750.00 lease rental on the Park Central cabinet was not due prior to “installation and collection”.

I interpret the term “collection” to cover the payment of each payment of an amount due on a contract made by me with a client for service on any particular Direct-U-System. If such be the truth, “collection” applying to paragraph one—(1)—refers to amounts collected during the first year’s operation and “collection” applying to paragraph two—(2)—refers to amounts received on contracts made during the second year’s operation. There have been no collections made on the Park Central cabinet applying to any contracts for a second year, nor have any such contracts been made. Therefore, I do not see how you can claim any payment at all in connection with \$250.00 towards a second year rental, especially as you did not install the

first system complete prior to June 10, 1940, nor did you make such an installation possible before that date. If you had paid the price of the inverter, I would interpret differently.

In your letter of December 11, 1940, you say, "The Breslin Hotel installation was shipped to you on the ninth day of November." In a previous letter you state that it was shipped November 16th.

Referring, again, to your letter of December 11, 1940, you state, "We can not help but feel that you appreciate that by your failing to pay the royalty or account for the royalties, places your contract technically in default."

In this connection, I refer you to the third paragraph of your letter of December 18, 1939, in which you state, "We have also received the summary of the orders received, and it will be perfectly agreeable not to send us our royalty until you are satisfied that the equipment will function properly."

I sent you a photostat copy of this particular letter of December 18, 1939, and bracketed the paragraph which I have mentioned.

It is now over one year since you wrote that letter, and I am not yet satisfied that the equipment will function properly.

Very truly yours,

HAROLD E. WEEKS.

HEW:AV

Encs.

GOVERNMENT'S EXHIBIT No. 22

HAROLD E. WEEKS

COMPLETE STATEMENT OF CONTRACTS AND RECEIPTS ON SAME
FROM AUGUST 21, 1939 TO DECEMBER 21ST, 1940 (INC.) ON FIVE DIRECT-USYSTEMS
IN MANHATTAN, N. Y. CITY

Dec. 21, 1940

page 1

Cabinet	Contracts Date	Amt.	Rec'd August 1939	Rec'd September 1939	Rec'd October 1939	Rec'd November 1939	Rec'd December 1939	Rec'd January 1940	Rec'd February 1940	Rec'd March 1940	Rec'd April 1940	Rec'd May 1940	Rec'd June 1940	Rec'd July 1940	Rec'd August 1940	Rec'd September 1940	Rec'd October 1940	Rec'd November 1940	Rec'd December 1940
												3	5.00						
I Greeley Theatre	8/21/39	60.00		15	10.00						4	5.00	24	5.00	21	5.00	31	5.00	
I Willoughby Camera Stores, Inc.....	8/23/39	60.00	24	10.00							6	50.00				25	5.00		
I Chinese Village	8/24/39	60.00	24	10.00							29	10.00							
PC Robert Thorne, Inc.....	9/ 6/39	90.00		6	15.00								18	5.00	30	10.00		6	5.00
PC Jean E. Marshall	9/ 8/39	90.00		21	15.00								24	15.00					20
I Penn. Wine & Liquor Shop.....	9/ 8/39	60.00										14	15				16	15.00	8
PC The Camera Place.....	9/ 9/39	90.00						3	15.00				26	60.00					15.00
PC Carnegie Hall Auto Rental.....	9/15/39	90.00									29	15.00							
I Schoepfer's Taxidermy Studio.....	9/21/39	60.00										1	20.00						
PC Merian's Shoes	2/29/29	90.00																	
I Broadway Beauty Salon.....	9/29/39	60.00			30	10.00													
PC Federated Detective Bureau.....	10/ 5/39	90.00																	
I Charles C. Alehoff, D. D. S.....	10/ 6/39	60.00																	
I Larry L. Kronrot	10/10/39	60.00			10	10.00					25	10.00							
I Benjamin Miller	10/10/39	60.00			10	10.00					2	10.00	11	10.00			5	11.00	
PC Solmor Jewelry Co.....	10/19/39	90.00													23	19.00			
PC Thomas J. Short.....	10/27/39	90.00																	
PC Sonotone Corpn.	10/30/39	90.00					21	90.00											

HAROLD E. WEEKS

Dec. 21, 1940

page 2

Cabinet	Date	Contracts Amt	Rec'd August 1939	Rec'd September 1939	Rec'd October 1939	Rec'd November 1939	Rec'd December 1939	Rec'd January 1940	Rec'd February 1940	Rec'd March 1940	Rec'd April 1940	Rec'd May 1940	Rec'd June 1940	Rec'd July 1940	Rec'd August 1940	Rec'd September 1940	Rec'd October 1940	Rec'd November 1940	Rec'd December 1940	
I Harry A. Burgio.....	11/ 1/39	60.00										9	10.00							
PC Broadway Table Tennis Courts.....	11/ 7/39	90.00																14	30.00	
PC Le Roy R. Stoddard, M. D.....	11/ 7/39	90.00									24	45.00		19	22.50					
PC Miss Julie's Dance Studios.....	11/23/39	90.00					9	7.50		23	7.50		7	7.50	5	7.50	26	7.50		
PC Madam Zenda	12/ 6/39	90.00					11	15.00												
PC Jay Lord—Hatters	12/15/39	90.00					19	15.00			5	30.00	7	15.00	21	15.00				
PC Gem Garage	12/21/39	90.00					21	15.00		25	7.50	15	7.50	19	15.00	19	7.50	6	7.50	
GC Willoughby's	1/20/40	90.00													22	90.00	17	7.50	18	7.50
			20.00	40.00	30.00	0.00	142.50	15.00	0.00	15.00	182.50	80.00	122.50	45.00	144.00	25.00	38.50	67.50		

[Endorsed]: Filed Sept. 22, 1942.

GOVERNMENT'S EXHIBIT No. 26

Direct-U-Systems
General Offices - Sixth Floor
357 South Hill Street
Los Angeles, California

December 10, 1938

To Whom It May Concern:

This is to certify that Mr. C. S. Wallace whose signature appears below, is a Division Manager of this Corporation, with authority to execute, in the name of this Corporation, our standard lease agreements covering the appointment of exclusive Franchise Owners.

Mr. Wallace has authority to endorse checks or drafts made payable to this Corporation for the sole purpose of converting same into Cashier's checks or to certified checks payable to this Corporation.

DIRECT-U-SYSTEMS (a Corporation)

[Seal] By C. W. TALBOTT,
Executive Vice-President.

C. S. WALLACE.

Signature C. S. Wallace.

An International Service

[Endorsed]: Filed Sept. 22, 1942.

GOVERNMENT'S EXHIBIT No. 28

R. H. Bergen
Manager

YUkon 0820

Direct-U-Systems of Northern California
Franchise Owner
Direct-U-Systems
105 Montgomery St.
San Francisco, California

January 16, 1941.

Mr. C. W. Talbott
7225 Beverly Blvd.
Los Angeles, California

Dear Mr. Talbott:

I have very recently discovered that there was a franchise operator who preceded me here in San Francisco nearly a year ago. I have this morning had a long conversation with him, I refer to Mr. Ralph A. Burke. I believe that if I had been given the full information in regard to his activities it would have been of marked assistance to me and I do not think that the information should have been with-held.

Mr. Burke states that he did a certain amount of build-up and preliminary work here and that when he severed his connections with Direct-U-Systems, he turned over all of that information to Mr. Marshall. I believe that I should have the benefit of the work that he did and request that you see that the following data is sent to me:

1. A list of all major business firms in San Francisco with the names of directing personnel of each firm. Mr. Burke states that he spent a great deal of his personal time getting together this information and then turned it over to Mr. Marshall.

2. A complete breakdown of the expenditure of the hotel guest's dollar into particular fields of merchandise, amusements, etc. Mr. Burke states that he spent a good many dollars having various agencies secure this breakdown, which goes very much further than the breakdown of the American Automobile Association which has been submitted to me from your office. He states that his breakdown shows, for example, how much is spent for furs, for cameras and photographic supplies, etc., etc.

I have told you in previous correspondence that while we have a great many prospects who are interested, we are having very considerable difficulty in closing those prospects. This is specific information as to expenditures and it may be of real value in clinching these deals.

3. A list of the sales that Mr. Burke actually made. He says that the money was refunded to each and every one and that they should still be good prospects.

I trust that you can get this information together and send it to me promptly.

Yours very truly,
R. H. BERGEN.

RHB/s
(Cut)

Our Direct-U-Systems Direct Buying Dollars to
You and Tell Your Message

[Endorsed]: Filed Sept. 22, 1942.

GOVERNMENT'S EXHIBIT No. 32

2607 Mira Vista Drive,
Richmond, Calif.

May 7, 1941.

Mr. C. W. Talbott, Pres.
Direct-U-Systems,
7225 Beverly B'l'v'd,
Los Angeles,

Dear Mr. Talbott,

I have your letter of May 2nd for acknowledgment. I, also, regret that I have been compelled to cease my efforts with Direct-U-Systems, but with the industrial experience I have behind me, I cannot afford to fool along with a proposition that is a fight every inch of the way. I am again very satisfactorily connected in Industry.

I have no desire to hold this territory inactive for the balance of my franchise period, but neither have

I any intention of turning over my contract for mere promises.

I shall be pleased to turn the franchise back to you for a fair and just consideration, but that consideration will have to be cash.

Yours truly,

RALPH H. BERGEN.

[Endorsed]: Filed Sept. 22, 1942.

GOVERNMENT'S EXHIBIT No. 34

R. H. Bergen
Manager

YUkon 0820

Direct-U-Systems of Northern California

Franchise Owner

Direct-U-Systems

105 Montgomery St.

San Francisco, California

November 30th, 1940.

Direct-U-Systems

7225 Beverly Blvd.

Los Angeles, California.

Attention Mr. Marshall

Dear Mr. Marshall:

We are having difficulty with the batteries in the demonstration model burning out. Have you found any means of protecting them when carried in the case, to prevent contact being made in the switch and so burning the battery out.

We have contacted the Eveready agency here, who sent us to McKesson & Robbins, and in both instances we failed to secure replacements.

McKesson & Robbins said they would get them from the Eveready people, but that we would have to buy them in lots of three dozen at \$2.36 per dozen, whic is preposterous.

Will you please send me six of these batteries. Cannot some means be found to remedy this condition or rebuild the sets with a raised rim about the edges to protect the push buttons.

Sincerely

R. H. BERGEN.

Sent 6 photos mounted of El Cortez Hotel Apts.
6 Batteries.—Prepaid by T
(Cut)

Our Direct-U-Systems Direct Buying Dollars to
You and Tell Your Message

[Endorsed]: Filed 9/22/42.

GOVERNMENT'S EXHIBIT No. 35

R. H. Bergen
Manager

YUkon 0820

Direct-U-Systems of Northern California
Franchise Owner
Direct-U-Systems
105 Montgomery St.
San Francisco, California

December 6, 1940.

Direct-U-Systems
7225 Beverly Blvd.
Los Angeles, California.

Attention: Mr. C. W. Talbot, President

Dear Mr. Talbot:

I have your letter of December 5th concerning the additional copies of forms D-25 and D-31, for which I thank you.

I appreciate your offer of assistance if needed. As I stated in a previous letter, we are finding that nobody is willing to really do business on this proposition until after the first of the year. I have two very good men who have been making sales calls, and they have made a large number of calls in the nine days that they have been at it, about seventy-five calls in all. They are getting a very favorable reception with comparatively few complete turn downs, but most people after listening carefully, say, "Come in after the first of the year". The boys have quite a few "call backs" to make next week, but I anticipate the final answer on them will

be the same—next year. Also, I anticipate that the nearer we get to Christmas the more that will be true. If you can give me any suggestion as to how to combat that, I will appreciate it.

I would also be pleased to know just what success Mr. Barnes is having in Long Beach. Is he making actual sales, and if so how does he accomplish it?

I am at present running another ad for salesmen and intend to make the utmost use of this month in building up and training my sales force, arranging leases with the hotels we wish to work on, preparing and perfecting prospect lists and in every way possible preparing for the first of the year.

In our solicitation, we are getting no response whatsoever to the El Cortez Hotel. The opinion seems to be prevalent here that it is, to a very large extent, a hotel of permanent guests. In fact the large pictures sent to me a day or two ago from your office showed in very large letters down the front corner of the building "El Cortez Hotel Apts.", which of course does not interest the merchant trying to catch the transient trade. We have no sales made on that hotel nor even any live prospects. On the other hand, many of the people we have called upon have asked about the Palace and St. Francis. Therefore I feel that if we succeed in signing up either or both of those hotels, we will meet with much quicker success, which will have a

marked psychological effect, by working on them and leaving the El Cortez until a later date.

We have closed one contract on the Palace, but naturally, not having closed a deal with them yet, we have accepted no money, nor have we made any promises as to time.

We are negotiating with the Lions Club to take the space on the Sir Francis Drake board as suggested by Mr. Marshall. The results of a call made since writing this do not look too encouraging.

We are negotiating at present with the St. Francis and Palace; will see the Mark Hopkins today, and the Empire as soon as possible.

Mr. Bryant showed me a copy of a contract with the Hotel Oakland. We will want to start on the east side of the bay as early in the new year as possible, so I would appreciate your sending me a copy of that contract.

I have received from you 500 business cards—400 of which were printed complete and 100 lacked a salesman's name, so they will have to go through a press again to be serviceable. As I take on additional salesmen to cover this large territory, am I entitled to additional cards for them, and renewals as needed.

Also am I entitled to additional prospect letters as I need them for additional hotels and other sections of the territory.

What is the status of the contract Mr. Marshall

told me about that is being negotiated with the Bank of America for use of the animator?

With kindest regards, I am

Yours very truly,

RALPH H. BERGEN.

R. H. Bergen

RHB/s

(Cut)

Our Direct-U-Systems Direct Buying Dollars to
You and Tell Your Message

[Endorsed]: Filed 9/22/42.

GOVERNMENT'S EXHIBIT No. 36

R. H. Bergen
Manager

YUkon 0820

Direct-U-Systems of Northern California
Franchise Owner
Direct-U-Systems
105 Montgomery St.
San Francisco, California

December 13, 1940.

Direct-U-Systems
7225 Beverly Blvd.
Los Angeles, California

Dear Mr. Talbot:

This acknowledges receipt of your letter of the 12th and the copy of the contract with the Hotel Oakland. I propose to start work in Oakland just as soon as I can after the first of the year. I want

to get the sale of the Sir Francis Drake well started first. I expect by the first of the year to have at least four good salesmen, so that as soon as the Drake board is really going I can shift one or two of the men to Oakland.

In your previous experience have you found it necessary to accept some contracts on a monthly payment basis with a non-revocable annual contract? We are running into that here. We have established the price on the Sir Francis Drake board at \$120 per year, and plan at present to establish that same price on the St. Francis and Palace. We have sold one space on the Sir Francis Drake board to a well established, large, and old Beauty Salon, but could only get it on the basis of \$10 monthly payments. We have also had two other concerns turn us down on the Sir Francis Drake but express willingness to sign, one for the Palace and one for the St. Francis. Both are highly reputable concerns of long standing so we accepted their contracts without any cash payment subject to our ability to close with those hotels. But here again they both insisted on monthly payments.

There is a problem I wish to discuss with you concerning the Sir Francis Drake board. As the map now appears on that board about 60% of it is south of Market Street in the wholesale, industrial, and shipping section of the City, where there is scarcely a spot that is of any interest to the hotel guests. On the other hand all the major hotels, all of the retail shopping district, all entertainment and night spots, and business and professional men

are north of Market Street, which occupies only about 40% of the map as now shown. Therefore, I think that for the final installation in the Sir Francis Drake a new map should be installed. Incidentally since all the major hotels are within a few blocks of each other in this Market Street and North of Market district, the chances are that the same map will serve for most, if not all, of them. I am enclosing two maps of the City showing in one case approximately the area now shown, and in the other my recommendation of the area that should be shown.

In the meantime the one space we have sold on the Sir Francis Drake was on the basis of \$10 down, \$10 January 1st and monthly thereafter. Therefore, I would like if possible to place his name on the board before January 1st, even tho we may change the whole map eventually. This party has not only taken space on the Drake but has asked for an option on the Palace and St. Francis. We hope to contract with both those hotels next week, in which case this party will sign additional contracts, and at the same time all information will be secured so you could make up the cards for me to go on the present board.

Has it been customary to make any concession in price to a client if he contracts at one time for space on several boards. We have thought that if necessary to secure such contracts, it would be good business to make a price of \$25 per month for three boards instead of a straight price of \$10 per month per board. Would such an arrangement raise any

complications? Would you consider it good policy?

The cards on the Sir Francis Drake animator have become very badly marred due to a bad roller that was on that machine while Mr. Bryant was here. I am enclosing a couple of scraps of one card to show the extent of the disfiguration. It is a bad demonstration and many very desirable clients are looking at that board. The Managers of both the St. Francis and Palace are going to look at it, therefore, I think that we should remove all of those cards and replace them with a few new ones. I am enclosing a sheet of suggested copy for eight new cards; will you kindly have them made up for me and send them as quickly as possible. The present condition of that animator is really very bad.

Sincerely yours,

R. H. BERGEN.

RHB/s

Enc.

(Cut)

Our Direct-U-Systems Direct Buying Dollars to
You and Tell Your Message

[Endorsed]: Filed 9/22/42.

GOVERNMENT'S EXHIBIT No. 40

R. H. Bergen
Manager

YUkon 0820

Direct-U-Systems of Northern California
Franchise Owner
Direct-U-Systems
105 Montgomery St.
San Francisco, California

January 10, 1941.

Mr. Talbott, President
Direct-U-Systems
7225 Beverly Blvd.
Los Angeles, California

Dear Mr. Talbott:

I am enclosing two contracts for the Sir Francis Drake Board, together with location chart and copy for 8 by 10 card.

I want to spot these two sales on the map that is now here, then they can also be located on the new map you are making up, which I believe should not be installed until the board is completely sold. Will you therefore please make up the necessary cards, and send them to me. Does Mr. Starkey have the necessary drill to install new lights and do you instruct him on such work or should I?

When at the Hotel today, I noted that the animator is still disfiguring the cards, and the new ones you sent me recently are already beginning to look shoddy. It seems to me that the trouble is with the central rubber roller that rides against the

wooden spool. I cleaned the spool off thoroughly when I put the new cards in, but there is now a black streak on the spool which transfers to the card and forms a black streak down the centre. What can be done to remedy that? Will you please instruct Mr. Starkey and let me have a copy of your letter.

With reference to additional letters for the hotel's use. Their letters are white block letters, all caps, and they particularly wish about three each of the vowels in the one inch size.

With best regards,

R. H. BERGEN.

RHB/s

(Cut)

Our Direct-U-Systems Direct Buying Dollars to
You and Tell Your Message

[Endorsed]: Filed 9/23/42.

GOVERNMENT'S EXHIBIT No. 42

H. R. Browne

Phone GARfield 7700

Resident Manager

Golden Gate Direct-U-Systems

Franchise Owner

Direct-U-Systems

580 Market Street

San Francisco, California

September 24, 1938.

Direct-U-Systems,
357 So. Hill Street
Los Angeles, Calif.

Gentlemen:

I realize it is inconvenient, to say the least, to be unable to see you in person for a discussion of our mutual interests, however, will have to make the best of the situation and try to progress by the slower and somewhat unsatisfactory medium of correspondence.

I am sure you will realize that the questions I ask from time to time are propounded in all sincerity and are questions that are being asked here in San Francisco, and are natural queries arising in an effort to promote and pioneer a new deal, therefore, please do not ignore them but give me either a "yes" or "no", or some reasonable explanation that will be of assistance.

Several weeks ago I wrote you about the 8 & 10 cards stating that both advertisers and hotels would insist upon these cards being lettered in a union

shop here in San Francisco, and as you are familiar with the labor situation in this City it will be unnecessary to dwell further upon this subject. You have failed to answer my letter. Please give me some kind of a reply as to your position in this matter.

Another question is being constantly asked here. Have you installed the Cabinets in Los Angeles and in what hotels? If you have a Los Angeles installation a picture of the lobby taken at a distance of 15 or 20 ft. from the Cabinet would help. This picture might aid in overcoming the constant request to see a full size Cabinet, the subject of several previous communications. Have you an installation in any other City, I mean one carrying the 8 & 10 movie cards? Copies of the letters shown the writer from the Multnomah and New Washington Hotels should be available.

Now, for an important feature developed during the experience of the last month. Many of the large advertisers, Department Stores, Transportation Companies and others place all advertising through an Agency. The latter exacts a 15% commission. The Sales Manager or Salesmen must be paid up to 25%, therefore, if the franchise owner is stuck for this 15% the margin of profit is much less than 10%—practically prohibitive. Has this situation arisen in your experience and how is it being handled? Also, is there a quantity discount in the event an advertiser takes three or four locations on each board?

ber 27th and if we can both translate the spirit of our letters into definite action, we may be able to "go over the top."

A week ago the local advertising club sent me a man, Bert Van Cleve, who has had extensive advertising selling experience and is a high class man, with the best of recommendations. I engaged him as a Sales Manager, hoping the third chance would bring the winning number. He was out on the firing line this week, with a drawing account against commission of \$25.00 per week, seeking additional hotel locations, that we might have a group to offer advertisers, particularly the large ones.

Herewith you will find leases and location charts covering the following hotels:—

Sutter	—191 Sutter Street
Governor	—Jones and Turk Street
Powell	—17 Powell Street
Mark Twain	—345 Taylor Street
Clark	—217 Eddy Street
Fielding	—386 Geary Street

You will observe the Sutter is for one year, the Governor for two years: this for the reason that these periods represent the tenure of the present leases. Kindly return promptly a copy of these leases, properly accepted.

Incidentally, the copy of the Cortez lease has failed to reach me, and I should have a copy of the Hotel Shaw lease. Also, in your letter, you overlooked advising me about new lease agreements, the form now in use containing a number of glaring errors in spelling.

In your letter of the 27th you state you will make some arrangement to have one of your organization visit San Francisco in the near future, although you deem it inadvisable to do so, pending settlement of strike conditions.

However, Mr. Van Cleve, with two other sales persons, will start out Monday to sign advertisers: the former believes he has a method of approach that will overcome the strike complex. Please, if at all possible, make your visit at once; certainly within the next week would be ideal. By that time we will have a hotel lined up for the sample board and hope it will be the Plaza. You could then size up the situation at first hand, get the information you need to complete the board, facilitate its speedy installation, thereby greatly helping to break down sales resistance.

I appreciate your concession as to having the 8 x 10 cards made here in San Francisco. Please advise as to the weight of the stock on which these cards are to be printed.

There are a number of other questions of vital importance in connection with our deal, but we can discuss them when you reach our city.

I am very positive that you will be amply rewarded by making this personal visit to San Francisco without delay.

For instance, the patent situation in connection with Direct-U-Cabinets needs to be discussed very thoroughly, for there is now on foot here an organized movement to duplicate your product, with a few minor changes. This is only one of many an-

gles bearing on our relations together. If we get off on the right foot, we will both permanently benefit thereby.

Sincerely,

H. R. BROWNE.

HRB/N

Direct-U-Systems Direct Buying Dollars
to You and Tell Your Message.

[Endorsed]: Filed 9/23/42.

GOVERNMENT'S EXHIBIT No. 45

Western Union Telegram

FA9 40 NT-San Francisco Calif 23

1940 Jan 24 AM 6 47

E M SCHUTT—1026 Williamson Bldg Cleve—

You Are Exclusive and the Only Representative Direct-U-Systems Ever Had in Your Area. Any Action Preventing or Interfering Your Operations Will Provide Grounds for Damage Action Against Them. Continue Your Operations Will Protect You Against Any Action Started.

Direct U Systems Talbot . . .

[Endorsed]: Filed 9/23/42.

GOVERNMENT'S EXHIBIT No. 47

Direct-U-Systems

General Offices

Direct-U Building - 7225 Beverly Blvd.

Los Angeles, California

January 30, 1940.

Mr. E. M. Schutt

1026 Williamson Bldg

Cleveland, Ohio

Dear Mr. Schutt:

Mr. Morgan has forwarded us your letter of the 25th, as well as his answer of the 26th, and we feel that you are being unduly exercised over any possible competition.

We are at a loss to understand why you should let the Robot or any other competitor make you feel you have no chance, for there is no question that our equipment is superior in many ways, and we have advantages and features that none other have.

Apparently the franchise operator for the Robot has made a complete failure and realizes that you are able to become real competition to him and do a job that he has apparently failed to make good on, and this is the reason that he has been attempting to discourage you.

As we wired you and wrote you, if anyone interferes with your operations or attempts to embarrass you to the extent that it is detrimental to your operations, we feel that you would be within your rights to assure them that they had better be able to

take care of a substantial damage suit, for this is most certainly what would be brought about.

You have a lease on the New Amsterdam and we would suggest that you complete the selling on this cabinet first, before worrying about leases on other hotels, for as we advised you, you will have no difficulty in getting all the leases that you want after you have shown the hotel men that you can and will put it over.

You can readily appreciate that the hotel man wants new and outstanding service for his guests, and this is the one thing that he is always striving to attain.

As far as getting the other hotels, we feel that you will have no difficulty, although it may prove to be somewhat of a nuisance if your competitor has made a nuisance of himself in contacting the hotels. We suggest that you go ahead and work on your New Amsterdam and get it installed, and by that time you will find that the competition has completely fallen by the wayside.

As far as our contract, we did not agree, as you can readily appreciate if you will read your copy, as to any specific number of hotels. We ordinarily recommend to our division managers that they secure one hotel for the franchise operator, and let him go to work on it, and he will be more successful than if he has a great number of hotels and goes out and tries to solicit subscribers on all of them, instead of consummating one or two.

You can readily appreciate that for you to have five or six hotels and attempt to sell on all of them,

that the natural result might be that you would have the spaces about one-half sold on five or six locations and none of them completed.

Mr. Morgan has assured us that Mr. Mark Regan appreciates the fact that our service does render an outstanding civic betterment and by the change of rotating cards, it affords the subscriber a service that he cannot get in any other way, and he can constantly keep his publicity apace with the seasons or his special items that he desires to publicize.

As far as competition, we know that competition is the life of business and you most certainly should not let this get you down, as we are at the present time building an installation which goes into Washington. The franchise operator there ran into a competitive operation, with the natural result that after the competitor's salesmen viewed our equipment, they immediately made application to go to work for the Direct-U-Systems' representative, and very freely stated that our service offered more than they were able to give, and consequently they were interested in making this change.

It is very easy for you to call to the attention of any hotel that holds a competitor's lease, that undoubtedly it is not an exclusive lease, and they are just as much interested in getting this equipment in, as you are. If you will present this upon sound business principles, you will have no difficulty in gradually getting all of the leases that you will desire.

Referring to one of your paragraphs in which you state that the Detroit company who has taken

over the distribution of Direct-U-Systems in that territory, is under investigation. Of course we know nothing about this, with the exception that we made a very exhaustive investigation, and the men involved in this company maintain an unusually high standing in the community and we might say that they are getting under way and are proceeding very nicely, and we feel confident that it will only be a comparatively short time until they will have their first installation in.

You can readily appreciate that when they secure a lease on such hotels as the Detroit Leland and the Ft. Shelby Hotels, which have an unusually high standard among hotels, that the hotels in Cleveland will very rapidly fall into line. We would strongly suggest that you proceed with the New Amsterdam and by the time that you have it completed, you will find that your trouble-making competitor has died the death that usually occurs to men who are interested in creating trouble instead of proceeding with their work.

[Printer's Note: "Detroit Leland" and "Ft. Shelby Hotels" circled and "Have these ever been actually installed"? written in right-hand margin.]

In reference to your last paragraph relative to the lease rentals between other hotels. According to the schedule which we attached to the agreement, which of course is not a part of it, as we are not in position to compel you to pay your salesmen any stated amounts, nor can we compel you to pay the hotels the amounts that we suggest; but we know

that except in rare instances, the \$100.00 per year secures for us the leases from the best hotels. In fact, we have leases on hotels of approximately 2000 rooms and pay \$100.00.

In order to assure you of our desire to cooperate, and it must have been advisable for Mr. Morgan to add the 10% in there; we will absorb this additional cost in this particular instance and let you deduct it from our royalties.

We feel sure that you will appreciate that this is more than fair, but we are interested in your proceeding and developing your area, and we trust that you will not let some competitor who apparently has made a failure, discourage you so easily, as from the reports Mr. Morgan made on you, we feel that you are an entirely different type.

In closing, please let us assure you that you were quite familiar with each section of the agreement and you will recall that we wrote you immediately when we acknowledged your agreement, and asked you if there was anything pertaining to our agreement which you were not fully in accord with, and thoroughly understood, and it was agreeable.

We assure you that we stand ready, willing and able to more than fulfill our portion of the agreement and we suggest that you forget all about your competitor and go to work on the hotel which you have, and we will start a campaign with the hotels you have stated you are particularly interested in leasing, and feel sure we can assist you in breaking down any resistance.

With kindest regards we are,

Very truly yours,

DIRECT-U-SYSTEMS,

By C. W. TALBOTT.

(Cut) An International Service

[Endorsed]: Filed 9/23/42.

GOVERNMENT'S EXHIBIT No. 49

Direct-U-Systems

General Offices

Direct-U Building - 7225 Beverly Blvd.

Los Angeles, California

February 8, 1940.

Mr. E. M. Schutt,
1026 Williamson Blvd.,
Cleveland, Ohio

Dear Mr. Schutt:

I wish to acknowledge your letter of the 30th and regret that it has not been answered sooner, but we have had quite a lot of illness in our organization.

We are extremely sorry that you are having so much difficulty in getting started and we feel that you are letting some implications get you unduly worried. As far as anyone having identical equipment to ours, including the Rotating machine, we would appreciate your sending us the information on to us as we have never run into it. It is possible, of course, for someone to reproduce an electric di-

rectory but they are not comparable in the value that is rendered to the merchant. We have run into definite cases where the salesmen of the competitor wanted to quit and work on our proposition because they could see the many advantages.

We are not interested, and you should not be interested in the other fellow and his arrangement. You can rest assured that you have equipment that has much more of an appeal than any competitor can possibly have. If you will send us a list of the hotels that you desire to have leases we will write them direct telling them of the many advantages. We feel that the standing of the company and your personal standing, we should have no difficulty in getting them to reconsider in giving you a lease for an installation.

As far as the Better Business Bureau, they are perfectly at liberty to make any investigation they desire as our company is operated on an extremely ethical basis. We, of course, are not in a position either to know or state about any competitor.

We appreciate as well as you must, that it is quite unpleasant on the part of the Better Business Bureau to go out of their way (as you have conveyed the thought) to create trouble for you, as their purpose should be as an investigating organization and not a trouble-making one.

In reference to the National Directories System, we have very carefully investigated their connection with the Robot Map Service and the president of the Robot Map secured the control of the National Directories System a couple of years ago. We know

that they are constantly being tied in with law suits on the National Directories set-up and that they are one and the same company. Of course, we have no information as to the truth of these assertions and there is no way we can secure this information for you.

We did have some information a month or so ago that the salesman of the Robot Company had quit and they were ready to fold up; but again, we are not in a position to substantiate these facts other than we can say it is heresay.

The Direct-U-Systems, nor any of its officers have any connection with the National Directories or the Robot Map Service.

Several years ago the writer did have a financial interest in the National Directories but sold all of his holdings in March, 1938, to Mr. Young who is the president of the Robot Map Service.

Outside of this, there is no other information we can give you with the exception that the Direct-U-Systems has exclusive features that no other company has, and also that the company operates on an extremely ethical basis.

If you do not feel that you have an opportunity to go ahead with this work, of course we will endeavor to work out some arrangement to secure someone to take over your contract which, as you know, provides that you have paid the advance lease rental on two Systems to be delivered to you in accordance with your contract and when you furnish us with the necessary data to complete the equipment.

We feel confident that a man of the type that

you are—judging from the recommendations of Mr. Morgan, that if you would apply yourself to the development of your territory and let the competitor do likewise or as he desires, you will be successful. We suggest that you forget all about the other fellow and go ahead with your business which cannot help but be productive.

Yours truly,

DIRECT-U-SYSTEMS,

By C. W. TALBOTT.

nh

(Cut) An International Service

[Endorsed]: Filed 9/23/42.

GOVERNMENT'S EXHIBIT No. 50

Cleveland Ohio.
1026 Williamson Bld.

February 14, 1940.

Direct-U-Systems.
7225 Beverly Boulevard.
Los Angeles, California.

Attention Mr. C. W. Talbot.

Gentlemen,

I am somewhat surprised at your letter of February twelfth. You wrote on February eighth in the next to the last paragraph to the effect that if I did not feel that I could continue you would arrange to get someone else to take over my franchise. Now in this letter of February twelfth you are again

denying the contract calls for five hotel leases and speak of a settlement on an equitable basis.

I am going into this matter in detail once more with you in an endeavor to give you a clear picture of the facts even though most of what I have to say is repetition.

I had my first interview with Mr. Morgan on the evening of November 22, 1939 in his room at The Statler Hotel. That interview lasted for over three hours. Mr. Morgan after having gotten me interested in your advertising medium definitely assured me that it was something entirely new, there was not nor had there been anything like it on the market and that therefor I as franchise owner would have an open and clear field in which to introduce this method of advertising. On the following Friday November 24, 1939, Mrs. Schutt and myself visited Mr. Morgan at his room in The Statler Hotel in order that Mrs. Schutt could also learn at first hand just what Mr. Morgan's proposition was. Mr. Morgan again repeated himself to both Mrs. Schutt and me that this was a new thing etc. This as you will note by my previous letters was not at all a fact and definitely constitutes, "misrepresentation". Incidentally if you need any further proof of my statement you might be interested in knowing that a personal friend of mine has been in to see me who advises me of the following. This gentleman answered a newspaper advertisement last fall or late last summer and subsequently had an interview with the representative of The Robot Map Service whose proposition was identical with that of The Direct-

U-Systems. He did not however take up their proposition but later answered another blind newspaper advertisement and this happened to be Mr. Morgan's advertisement. The gentleman had an interview with Mr. Morgan and he informs me that Mr. Morgan not knowing of his previous interview with The Robot Map Service told him also that The Direct-U-Systems was something entirely new and all the rest of it, just as he, Mr. Morgan, told Mrs. Schutt and myself.

Referring to your statement in this letter of February twelfth and in your other letters that it is not the policy of your company to guarantee five hotels to a franchise owner. Please let me make this point clear to you. It does not concern me at all as to what your general policy is in this respect. I am only interested in my own particular contract and understanding with Mr. Morgan as the representative of The Direct-U-Systems. Returning again to my first interview with Mr. Morgan and again to the second interview accompanied by Mrs. Schutt, Mr. Morgan did specifically, definitely and positively guarantee that he himself would secure for me five good hotel leases and he was so positive that I asked if he had any objections to including this guarantee in my contract. He readily agreed to this inclusion and on Monday, November 27, 1939 he went with me to my attorney and again affirmed to both my attorney and myself that the addition of the word "five" in paragraph seven of my contract meant that he, Mr. Morgan, did guarantee to secure five good hotel leases. If any other interpretation is

claimed after Mr. Morgan definitely assured my attorney and us that he did mean it to guarantee five hotel leases then such interpretation would constitute "fraud".

Repeating other items of past letters let me say again that if Direct-U-Systems are solely interested in the legitimate business of making money through their advertising medium, then it certainly is not to their interest to try to induce me to hold this franchise feeling as I do about the matter.

You speak of working out an equitable basis. I can consider no equitable basis except the re-purchase of my franchise for the full amount of fifteen hundred dollars. In fact that is not even an equitable basis to me as I have invested considerably more than two hundred dollars additional in setting up an office to say nothing of the month and a half of time wasted and the loss of any income for this period. I took over this franchise in good faith, the proof of which is born out in my having spent this additional money and time but due to misrepresentation and non-fulfillment of contract on the part of Direct-U-Systems or it's representative I cannot go forward with it.

I again ask for the amount of fifteen hundred dollars at which time I will return my franchise together with all other items belonging to Direct-U-Systems.

In closing I might inform you that when Mr. Morgan was in Cleveland he contacted the manager of one of the hotels, did not secure a lease, but did inform me that this man was so interested that he

wished he had the franchise. Might I suggest that Mr. Morgan sell this franchise to him.

Very truly yours,
E. M. SCHUTT.

[Endorsed]: Filed 9/23/42.

GOVERNMENT'S EXHIBIT No. 51

Direct-U-Systems

General Offices

Direct-U Building - 7225 Beverly Blvd.

Los Angeles, California

February 29, 1940.

Mr. E. M. Schutt,
1026 Williamson Building,
Cleveland, Ohio

Dear Mr. Schutt:

We wish to acknowledge receipt of your night telegram, and we endeavored to go into detail in our letter of the 16th when we submitted to you a Repurchase Agreement.

We feel that the Repurchase Agreement is extremely fair and equitable inasmuch as by its terms we assume all the costs and expenses of sending someone in there to arrange for the services of a man to take over your area and we also absorb the expenditures of Mr. Morgan's trip there. Of course, these men work strictly on a commission basis and when they select and have completed an arrange-

ment with a lessee they are entitled to their commission.

You can readily appreciate that the company is assuming a tremendous load here by our desire to be fair and equitable. We feel that that area has one of the most productive possibilities in the United States and we are extremely interested in getting it developed.

We have just recently made a shipment of another installation to New York City, and we are in our plant now completing an installation for Washington, D. C., Detroit, Pittsburgh, and several other places. We regret very much that you have not been able to get off to the flying start that Mr. Morgan felt you could do.

Frankly, we feel that this fellow who was a competitor has more or less unsold you on the proposition. If he would go ahead and make his installations, and you would do the same—we know that you would have an installation in very rapidly.

We will appreciate your executing this Repurchase Agreement thus allowing us to ship a division manager in there to arrange for someone to take over the development of that area. We feel that it would be only a short time until we had some installations there and then you would receive the return of the advance lease rental that you have made on equipment. This company stands ready, willing and able to deliver the equipment at any time that you will furnish us with the necessary information.

We assure you that we regret very much that this has not turned out as we all had anticipated. We

feel that this solution would be the best from all points, and one in which the Repurchase Agreement becomes a direct liability on the part of the company in the event they do any development in that area—and you may rest assured that we intend to do. It is something that will clear the situation up the fastest of anything we might suggest.

We trust that you will execute this agreement and return it to us. We will then expedite all possible delay and try to have that territory under operation by the time you return from your trip.

Anticipating hearing from you at our earliest convenience, and with the kindest personal regards, we are

Yours very truly,

DIRECT-U-SYSTEMS

By C. W. TALBOTT

nh

(Cut)

An International Service

[Endorsed]: Filed 9/23/42.

GOVERNMENT'S EXHIBIT No. 52

AGREEMENT

This Agreement entered into this 11th day of April 1939 by and between Direct-U-Systems with general offices at Los Angeles California, hereinafter referred to as the Lessor and Ralph A. Burke of San Francisco, Calif. hereinafter designated as the Lessee.

Now Therefore; in consideration of the premises and the mutual promises of the parties and the con-

sideration passing and to pass from each other to other it is agreed as follows:

The Lessor hereby grants to the Lessee the exclusive right to use and operate the Lessor's Direct-U-Systems in the following described territory for a period of 3 years on the following terms and conditions with the option for renewals for an additional period of 5 years on the same terms and conditions provided 5 installations have been made during the first year:

City of San Francisco, California.

(1) The lease rental on the 40 space Direct-U-Systems shall be \$750.00 each, and on the 30 space systems the lease rental shall be \$500.00 each for the first year payable upon installation and collection.

(2) The second and succeeding years each 40 space system shall be \$250.00 per year, and \$166.67 for the 30 space Direct-U-Systems, payable upon collection.

(3) \$1500.00 upon signing of this agreement. Said payment of \$1500.00 representing payment of the lease rental of the first two systems hereby leased by Lessee from Lessor to be delivered upon demand.

(4) Lessee agrees to pay Lessor 12% royalty in addition to the lease rental above set forth, payable upon installation and collection.

(5) In addition to the above lease rentals and royalties the Lessee shall pay to the Lessor the sum of 40 cents (40c) for each advertising card furnished for the Lessor's subscribers each month, individual

copy for the advertising cards to be used the following month, otherwise the Lessor shall be relieved from the responsibility of furnishing same.

(6) Lessor agrees to furnish and install each system complete and maintain same at its own expense during the life of the agreement.

(7) Lessee shall have the use of the leases of hotels and depots and shall pay lease rental direct to location Lessor in the above designated territory, and it is agreed that all leases shall be made in the name of the Lessor and must be approved by the Lessor.

(8) Lessor shall cooperate and assist the Lessee in securing location leases, hiring and training salesmen and rendering all additional assistance practicable, and shall loan sales equipment to Lessee As Per List Attached.

(9) Lessee shall operate the business in his territory as an independent contractor and shall in no way obligate the said Lessor. This is not an agency or partnership.

(10) All advertising space shall not be sold for less than \$5.00 per month unless agreed to in writing.

(11) This agreement supersedes and voids all previous agreements between the parties and before executing this agreement Lessee has read each provision herein and understands same, and no other agreement or representation shall be valid or binding on the Lessor.

In Witness Whereof the parties have affixed their signatures the day and year in this instrument first above written.

Down payment of Cashier's check for \$1260.86
and note for \$239.14 to be paid in 30 days.

DIRECT-U-SYSTEMS

By A. MARTINEZ

Lessor

By RALPH A BURKE

Lessee

Witness:

Schedule on following page—

ANTICIPATED INCOME AND EXPENSES LESSEE PRO-
POSES TO EFFECT FIRST YEAR—STANDARD 40-
SPACE INSTALLATION.

Income—

40 spaces at \$5.00 per month, or per year	\$2,400.00
---	------------

Expenditures by Franchise operator

Lease rental to Lessor.....	\$ 750.00	
Location lease (Hotel)	100.00	
Salesmen 15%.....	360.00	
Royalty 12% to Lessor.....	288.00	
40 cards month—or 480 per year at 40 cents each	192.00	1,690.00

Net Profit to Lessee each 40 Space in- stallation	\$ 710.00
--	-----------

Second and following years

Income—as above

Expenses—

Lease rental	\$ 250.00	
Location lease (Hotel)	100.00	
Salesmen 10% (acct renewals)	240.00	
Royalty 12% to Lessor.....	288.00	
480 cards at 40¢ each.....	192.00	1,070.00

Net Profit—each installation 2nd and fol- lowing years	\$1,330.00
---	------------

Standard 30 space installation		
Income—30 Spaces at \$60.00 per year.....		1,800.00
Expenses—by Franchise Operator		
Lease rental	\$ 500.00	
Location Lease (Hotel)	100.00	
Salesmen 15%	270.00	
Royalty 12% to Lessor.....	216.00	
30 cards month—or 360 cards per year	144.00	1,230.00
		<hr/>
Net Profit to Lessee each 30 space installa- tion		\$ 570.00
Second and following years		
Income as above.....		\$1,800.00
Expenses—		
Lease rental	\$ 166.67	
Location lease	100.00	
Salesmen 10% (acet renewals)	188.00	
Royalty 12% to Lessor.....	216.00	
360 cards year at 40 cents each.....	144.00	814.00
		<hr/>
Net Profit to Lessee 2nd and following years		\$ 985.35

EQUIPMENT

Direct-U-Systems will furnish to Franchise Operator the following equipment:

1. 3 Demonstration Cabinets
2. 3 Illustrated Presentation Books
3. 6 Selling Suggestion Circulars

Furnished Free: Up to—

4. 200 sets Advertisers' Service Agreements (quadruplicate)
5. 20 sets Hotel Lease Forms (triplicate)
6. Hotel Room Reminder Cards (as needed)
7. 200 Advertisers' Map Location Cards

8. 200 Letterheads—Imprinted with name of Franchise Operator

9. 200 Envelopes—Imprinted with name of Franchise Operator.

10. 200 Letters multigraphed on above, filled in with names and addresses of Franchise Operator's prospects, from list furnished by him, with 2c stamps attached. Shipped to Franchise Operator to place in mail.

Extra Equipment—If ordered additional to above; shipped COD:

Letters as per Item 10, Letterheads and envelopes printed, letters multigraphed, names and addresses filled in, no postage, per hundred,	\$5.50
Demonstration Cabinets, each,	7.00
Letterheads and envelopes per items 9 and 10, per 100 sets	2.50
Presentation Books, including Selling Suggestion Circulars, each—	1.00

[Endorsed]: Filed Sep. 23, 1942.

GOVERNMENT'S EXHIBIT No. 54

Direct-U-Systems
General Offices
301 N. Laurel Ave.
Los Angeles, California

April 25, 1939

Mr. R. A. Burke
625 Hyde Street
San Francisco, Calif

Dear Mr. Burke:

Your letter of April 24th addressed to Mr. Talbott has been turned over to me for answer. I have also read a few others.

Taking up the question of hotels. I never told you I would or the company would get you any particular hotel. I did tell you however that I felt sure the company would be able to get you a hotel to start on. That the company would cooperate with you in lining up the hotels and I showed you the letter they sent out to the hotels. I suggested that the El Cortez in my opinion would be a good hotel to start on and you agreed and I felt sure it could be lined up but did not guarantee we would get it or guarantee getting any hotels. You figured yourself the hotels would be easy to get in view of the fact they received a hundred dollars. I also showed you how we figured the number of people that came in and out the lobby of a hotel by the number of rooms in that hotel. I went over this with your salesman very carefully and he brought the hotel situation up while we were dis-

cussing the deal. But as far as guaranteeing or promising a certain number of people in or out of the lobby, we cannot do that nor can anyone do that, as it will vary on the number of rooms and the location of the hotel. The company tells me that they have sent you copies of leases of eight or nine hotels which includes the El Cortez and the Shaw Hotels, so I don't see as you have any kick coming on this question. In fact Mr. Burke, I think the company has certainly cooperated with you. It seems to me that all you have done is complain instead of getting in and working which is your part of the deal. You read the contract over and we went over it quite a few times and I think the company is living up to it as much as is possible for any one to do.

Regarding the patent. There was very little said about that particular fact. I told you it would be a good thing if there was some competition. The fact of the matter is there are no boards like ours in any hotel in San Francisco that I know of and you had plenty of time to go around and visit these hotel lobbies and check up on them. I still don't see what difference it makes whether they are patented or not. If you get a board in a certain hotel they are not going to let another one in. There is no cabinet made that I know of that has the moving card system in the middle and that to me is the outstanding part of the whole cabinet and that is a feature which you liked very much.

If someone comes along after you have taken this franchise and offers you another cabinet without

a cent down and no royalty, that is a case of being too bad that you did not run into it before you went into this and we are not to be blamed for that. I turned down a party there after you took the deal, who phoned me they would take it, but I told them I had already closed the deal there and I told you about that. He might have offered me twice as much, but in view of the fact that I closed with you and had signed the franchise, it would have made no difference if he should offer three times as much. It does not make any difference what someone else offers you, you knew what we offered and what money you had to put up and you had plenty of time to investigate and you did not look to me like a man that needed a guardian. In fact Mr. Burke you looked like a man who would make a success of this proposition, and you assured me that you could, otherwise I would have made a deal with someone else, as I only interviewed about six altogether.

I am sure if you get down to business and go after it you will do some business as there is plenty there and you have the outstanding advertising proposition there is on the market in my opinion, and nearly everyone I talked to thought the same thing. Your salesmanager told me he had looked at a great many different deals and this was the only one that had real merit and if he had not thought so he would not have signed up a contract to take the deal over, and you told me you thought he was a fine fellow and a high class man and I did too. It seems to me that all you do is crab instead of working, even before you have started. There

was never any question in your mind but that you could put it over, otherwise you never would have taken it over. All this talk about what someone else or a competing company offers you has nothing to do with this deal.

Our contract which you read over carefully very plainly states that the company is to receive 15% and that is what they expect and are entitled to and it is fair and equitable and it does not make any difference if someone else comes along and does not require any royalty—this is our deal and the one that you entered into in good faith. I am sure that you will find this company always ready to cooperate with you in every way in their power and that is all that anyone can do, as it is to their interest as well as yours,

Very truly yours,

A. MARTINEZ

An International Service

[Endorsed]: Filed Sep. 23, 1942.

[Envelope]

Direct-U-Systems

General Oces

301 N. Laurel Ave.

Los Angeles, California

[Stamped] 3 Los Angeles, Calif. Apr 26 930 PM
1939 Arcade Annex— Air Mail

Mr. R. A. Burke

625 Hyde St

San Francisco, Calif.

GOVERNMENT'S EXHIBIT No. 56

Ralph A. Burke
Manager

PROspect 8110

Burke Advertising Agency
Franchise Owner
Direct-U-Systems
625 Hyde Street
San Francisco, California

September 12
1939

Direct-U-Systems,
301 North Laurel Avenue,
Los Angeles, California.

Gentlemen;

Due to my absence from the city I was unable to execute your repurchase agreements sooner.

I am enclosing both copies herewith and trust that there will be no unnecessary delay in reassigning the territory.

Sincerely,

R. A. BURKE

RAB/B.

Direct-U-Systems Direct Buying Dollars to You and
Tell Your Message

REPURCHASE AGREEMENT

This Agreement entered into this 11th day of August 1939, by and between Direct-U-Systems, of Los Angeles, California, hereinafter referred to as

th party of the first party and Ralph A. Burke of San Francisco, California hereinafter designated as the party of the second part:

Whereas, the parties above entered into an agreement on the 11th day of April, 1939, whereby the party of the second part did agree to lease and did lease two (2) Electric Directory Systems from the party of the first part, and did pay as advance lease rental the sum of \$1500.00.

The party of the second part has not taken delivery of the systems as provided in the above designated agreement and the party of the second part does find himself as unable to fulfil his portion of the above designated contract.

The party of the first part desires to have the territory as provided for in the above contract developed whereby it can collect the royalties as provided under the agreement.

Now, Therefore, for and in consideration of \$1.00 receipt of which is hereby acknowledged, and the premises and the mutual promises of the parties and the consideration passing and to pass from each other to other, it is agreed as follows:

1. The party of the second part hereby agrees to the complete cancellation of the agreement and does renounce and relinquish any and all interests or claims in the agreement as entered into by the parties under the date of April 11, 1939.

2. The party of the first part agrees that it shall pay or cause to be paid to the party of the second part 25% of all the monies it receives from any source either as lease rentals or royalties from the

territory designated in the agreement after sales expense and cabinet costs have been deducted until the parties of the second part have received the total sum of \$1500.00. It is furthermore understood and agreed that First Party shall pay to the Second Party the sum of \$750.00 from first monies received from the reassignment of the territory covered by the contract dated April 11, 1939.

3. The added consideration for the agreement and promise of the party of the first part to pay to the party of the second part the monies as outlined in the above paragraph is based on the agreement of party of the second part to assist and cooperate with the party of the first part in developing and/or transferring of any rights in the territory as outlined in the original agreement.

4. Party of the first part hereby agrees to devote its best effort to place the territory covered by the agreement on a paying and profitable basis without unnecessary delay.

5. Party of the second part agrees to return or deliver sales equipment loaned to party of the second part which is the property of the party of the first part on demand,

It is mutually understood and agreed that this agreement, executed in duplicate, supercedes any and all previous agreements and contains the full

and complete understanding between the parties hereto.

DIRECT-U-SYSTEMS

By -----

Party of the first part

By R. A. BURKE

Party of the second part

Witness:

ORA BURKE

[Endorsed]: Filed Sep. 23, 1942

GOVERNMENT'S EXHIBIT No. 57

Phone PRospect 8110

R. A. Burke

Merchandising Counselor

San Francisco

1360 O'Farrell St.

May 29 1940

N. H. Marshall,
7225 Beverly Boulevard,
Los Angeles, California.

Dear Mr. Marshall;

I acknowledge receipt of your letter and must say that the thing with Telfer did not work out. He was apparently willing to cooperate financially only when he had the whole say and I was to be only a hired hand.

As I had been several weeks without income and as my wife's health was so poorly that she could

not watch over our other little income property I felt that it was imperative that I take a job where I could have an immediate income.

I put Telfer in touch with one of my former associates who can offer him some very valuable assistance should Telfer want it.

Regarding the Drake installation, The suggestion which I made you of selling a franchise for enough to get us all out at once seems very wise to me, especially since with the board here and in good working order it should be a psychologically opportune time to sell such a franchise. I believe it could be advertised on the basis of \$7,500 covering ten installations with a down payment of \$3,000 and the balance at \$750 each installation as sold. Out of the \$3,000 you could pay Brown and myself in full, and also any funds due Hopkins. It would leave you several hundred dollars additional capital to work on.

Since February 29 when you said you could put over an installation in three weeks, three months have passed and you are still a long way from and cash realization. This delay is excessive and not at all in keeping with any decent business ethics. I feel that I have been lenient beyond a doubt and I trust that you will realize that I cannot hold up the matter indefinitely.

Yours very truly,

R. A. B.

R. A. Burke

[Endorsed]: Filed Sep. 23, 1942

GOVERNMENT'S EXHIBIT No. 60

AGREEMENT

This Agreement entered into this 9th day of Feb. 1939 by and between Direct-U-Systems with general offices at Los Angeles California, hereinafter referred to as the Lessor and L. C. Whitby of San Leandro Cal hereinafter designated as the Lessee.

Now Therefore: in consideration of the premises and the mutual promises of the parties and the consideration passing and to pass from each other to other it is agreed as follows:

The Lessor hereby grants to the Lessee the exclusive right to use and operate the Lessor's Direct-U-Systems in the following described territory for a period of 3 years on the following terms and conditions, with the option for renewal for an additional period of 5 years on the same terms and conditions, providing 5 installations have been made during the first year:

Alameda, Santa Clara, Sacramento & San Joaquin Counties of California—

(1) The lease rental on the 60 space Direct-U-Systems shall be \$750.00 each, and on the 40 space systems the lease rental shall be \$500.00 each for the first year payable upon installation and collection.

(2) The second and succeeding years each 60 space system shall be \$250.00 per year, and \$166.67 for 40 space Direct-U-Systems, payable upon installation and collection.

(3) \$1500.00 upon signing of this agreement. Said payment of \$1500.00 representing payment of the lease rental of the first two systems, hereby leased by Lessee from Lessor to be delivered upon demand.

(4) Lessee agrees to pay Lessor 20% royalty in addition to the lease rental above set forth, payable upon installation and collection.

(5) In addition to the above lease rentals and royalties the Lessee shall pay to the Lessor the sum of 50 cents (50c) for each advertising card furnished for the Lessee's subscribers each month. The Lessee agrees to furnish not later than the 10th of each month, individual copy for the advertising cards to be used the following month, otherwise the Lessor shall be relieved from the responsibility of furnishing same.

(6) Lessor agrees to furnish and install each system complete and maintain same at its own expense during the life of the agreement.

(7) Lessee shall have the use of the leases of hotels and depots and shall pay lease rental direct to location Lessor in the above designated territory, and it is agreed that all leases shall be made in the name of the Lessor and must be approved by the Lessor.

(8) Lessor shall cooperate and assist the Lessee in securing location leases, hiring and training salesmen, and render all additional assistance practicable, and shall loan sales equipment to Lessee as per list attached.

(9) Lessee shall operate the business in his territory as an independent contractor and shall in no way obligate the said Lessor. This is not an agency nor partnership.

(10) All advertising space shall not be sold for less than \$5.00 per month unless agreed to in writing.

(11) This agreement supersedes and voids all previous agreements between the parties and before executing this agreement Lessee has read each provision herein and understands same, and no other agreement or representation shall be valid or binding on the Lessor.

In Witness Whereof the parties have affixed their signatures the day and year in this instrument first above written.

DIRECT-U-SYSTEMS

By N H MARSHALL

Lessor

By L. C. Whitby

Lessee

Witness:

C S WALLACE

Schedule on following page—

ANTICIPATED INCOME AND EXPENSES LESSEE PROPOSES TO EFFECT FIRST YEAR—STANDARD 60 SPACE INSTALLATION.

Income—60 spaces at \$5.00 per month, or per year.. \$3,600.00

Expenditures by Franchise operator

Lease rental to Lessor.....	\$ 750.00
20% Royalty to Lessor.....	720.00
Location lease	100.00
Sales expense (should not exceed 20%)	720.00

Sales Manager (if desired) 5%.....	180.00	
60 advertising cards 8x10 each month, or 720 per year at 50¢ each.....	360.00	2,830.00
<hr/>		
Net Profit to Lessee for each 60 space installation		770.00
Lessee acting as his own Sales Manager earning increase		180.00
<hr/>		
Net profits where Sales Manager is eliminated		950.00
 Second and Following Years		
Income as Above.....		3,600.00
Expenditures—		
Lease rental to Lessor.....\$	250.00	
20% royalty to Lessor.....	720.00	
Location lease	100.00	
Sales expense (should not exceed 20% account renewals)	720.00	
720 advertising cards at 50¢.....	360.00	2,150.00
<hr/>		
Net Profit each installation 2nd and following years		1,450.00
 Standard 40 Space Installation		
Income—40 spaces at \$5.00 per month, or per year		\$2,400.00
Expenditures by Franchise operator—		
Lease rental to Lessor.....\$	500.00	
20% royalty to Lessor.....	480.00	
Location lease	100.00	
Sales expense not exceeding 20%.....	480.00	
Sales Manager (if desired) 5%.....	120.00	
40 advertising cards per month or 480 per year at 50¢.....	240.00	1,920.00
<hr/>		
Net Profit to Lessee each 40 space installation		480.00
Lessee acting as his own sales manager.....		120.00
<hr/>		
Net Profits where Sales Manager is eliminated		600.00
<hr/>		

Second and Following Years

Income as above.....		\$2,400.00
Expenditures		
Lease rental to Lessor.....	\$ 166.67	
20% royalty to Lessor.....	480.00	
Location lease	100.00	
480 advertising cards at 50¢.....	240.00	
Sales expense should not exceed 15%	360.00	1,346.67
Net Profit to Lessee each 40 space installation 2nd and following years.....		1,053.33

24 Space Installation

Income—24 spaces at \$2.50 per month or per year		\$ 720.00
Expenditures by Franchise operator—		
Lease rental to Lessor.....	\$ 157.00	
20% royalty to Lessor.....	144.00	
Location lease	25.00	
Salesman 20%	144.00	470.00
Net Profit to Lessee each 24 space installation		\$ 250.00

EQUIPMENT

Direct-U-Systems will furnish to Franchise Operator the following equipment:

1. 3 Demonstration Cabinets
2. 3 Illustrated Presentation Books
3. 6 Selling Suggestion Circulars

Furnished Free: Up to—

4. 200 sets Advertisers' Service Agreements (quadruplicate)
5. 20 sets Hotel Lease Forms (triplicate)
6. Hotel Room Reminder Cards (as needed)
7. 200 Advertisers' Map Location Cards
8. 200 Letterheads—Imprinted with name of Franchise Operator

9. 200 Envelopes—Imprinted with name of Franchise Operator

10. 200 Letters multigraphed on above, filled in with names and addresses of Franchise Operator's prospects, from list furnished by him, with 2c stamps attached. Shipped to Franchise Operator to place in mail.

Extra Equipment—If ordered additional to above; shipped COD:

Letters as per Item 10, Letterheads and envelopes printed, letters multigraphed, names and addresses filled in, no postage, per hundred,	\$5.50
Demonstration Cabinets, each,	7.00
Letterheads and envelopes per items 9 and 10, per 100 sets	2.50
Presentation Books, including Selling Suggestion Circulars, each—	1.00

[Endorsed]: Filed Sep. 23, 1942.

GOVERNMENT'S EXHIBIT No. 61.

VERIFICATION OF ASSISTANCE GIVEN TO FRANCHISE OWNER

Franchise Owner L. C. Whitby

Operating as: Same

Address: 408 Breed Ave. City San Leandro Cal.

Assistance given on (dates) Feb. 27, 28, Mar. 1, 2

By N. H. Marshall as Div. Mgr. of Direct-U-Systems
(name) (title)

- (X) 1. Hotels (Oakland Hotel Already signed)
(send copy to Operator)
(St Marks Approved by Manager)
(G. Bacon Lease must be signed)
(by Owner on his return to Oak-)
(land about March 7 or 8th, 1939)

Name: (Harrison Hotel Lease signed.)

Location: (Contacted Mr. Levingston-Mgr)
(Whitecotton Berkeley who ap-)
(proved but before he signed lease)
(wante to see list of prospects)
(expected to be contacted so as not)
(to conflict with register ads.)

(3/2/39 Contacted Phil Riley Mgr Leam-)
(ington—approved but unable to sign lease)
(until return of associate from San Diego)
(next week.)

- (X) 2. Helped secure cooperation or acceptance
of local Chamber of Commerce Contacted
J. Delbert Sarber Mgr Berkely C of C as-
sured 100% co-operation.

- (X) 3. Assisted in securing x Salesmen (also
Sales Manager x), all as selected by Fran-
chise Owner as a satisfactory starting
organization.

Assisted in lining up and signing up sale-
manager turning over salesmens apps

Copy of agreement negotiated by Mr
Whitby attached.

- (X) 4. Assisted at meeting in training and informing said sales organization.
- () 5. Helped Franchise Owner find and rent suitable office quarters.
None needed
- (X) 6. Assisted in compiling adequate list of prospects to be mailed special letters.
This taken care at time agreement signed Feb. 12th, 1939
- (X) 7. Arrange to contact hotels in Sacramento
Contacted Claude Gilliam claimant & cost approved Call back next week
“ Mr. Curry California Hotel—
Owners have leased—Pick up few days.

To: Direct-U-Systems

Your representative named above has done, or assisted me to do, each of the items checked. Accordingly, I have now received all assistance you agreed to furnish me and all supplies for use in my first campaign, and believe that I will be able to carry out my part of our Agreement without further assistance.

Signed: L C WHITBY

Date: March 2, 1939

[Endorsed]: Filed Sep. 23, 1942

GOVERNMENT'S EXHIBIT No. 63

Phone Sweetwood 0419

L. C. Whitby

Franchise Owner

Direct-U-Systems

406 Breed Avenue

San Leandro, California

March 14, 1939.

Direct-U-Systems,
Los Angeles, Cal.

Gentlemen:

Since receiving your letter, I have again contacted the Hotel managers and have either received a flat "Not Interested" as from Mr. Riley of the Leamington or have been stalled by the remark "I am still looking it up".

It was my understanding the leases were to be supplied by you, since you were to have them in your name and I was merely to lease them from you. It appears that the Hotel Oakland is the only one on my list that you have signed up and that is not in accordance with the lease terms. Apparently that is the reason for not getting any others to sign. It appears the Hotels all check in with the Oakland. Unless you can supply me with the leases, I cannot let the sales force work.

Unless you can comply, I am going to demand the return of my lease deposit.

Yours very truly,

L. C. WHITBY.

Direct-U-Systems Direct Buying Dollars to You
and Tell Your Message

[Endorsed]: Filed Sep. 23, 1942.

GOVERNMENT'S EXHIBIT No. 64

Phone Sweetwood 0419

L. C. Whitby

Francise Owner

Direct - U - Systems

406 Breed Avenue

San Leandro, California

March 22, 1939

Direct-U-Systems,
301 N. Laurel Ave.,
Los Angeles, Calif.

Gentlemen:

I am enclosing the contract of the Hotel California for your signature.

In connection with your letter of March 20th, I wish to state that when I entered into the agreement with Mr. Marshall I told him that as I saw it, the hotel contract would be the only difficulty in operating. He stated that that was the company's responsibility and he would get the con-

tracts. He made the calls alone and his notification to me states that the contracts were ready and all I had to do was to pick them up.

It was with that understanding and assurance that I would have 5 or more contracts to work that I accepted the agreement. If there is only 2 or 3, it would not pay me to operate.

As this appears to be the case I have put the proposition to another party to buy out my interest and I believe he will do so.

Yours very truly,

L. C. WHITBY

Direct-U-Systems Direct Buying Dollars to You
and Tell Your Message

[Endorsed]: Filed Sep. 23, 1942.

GOVERNMENT'S EXHIBIT No. 65

Phone Sweetwood 0419

L. C. Whitby

Franchise Owner

Direct - U - Systems

406 Breed Avenue

San Leandro, California

April 17, 1939

Direct-U-Systems,
Los Angeles, Cal.

Gentlemen:

I am returning your agreement as I cannot see my way to sign it. I can make a better deal here,

if I want to let some one else operate on my money. If you sell the lease to another the sale money should come to me.

If you could return the lease rental of one of the boards and let one be sold at a time I believe that the one for Hotel Oakland could be started shortly. The objection raised by all prospects is "where is one being operated." If a photo or list could be shown it would be the answer. I was assured that they were being operated in many cities in the East but I have been unable to locate any. I am sure it would go well if one was located locally and went in with your assurance that you would see that it was.

Yours very truly,
L. C. WHITBY

Direct-U-Systems Direct Buying Dollars to You
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[Endorsed]: Filed Sep. 23, 1942.

GOVERNMENT'S EXHIBIT No. 66

April 26, 1939

Mr. L. C. Whitby
406 Breed Avenue
San Leandro, Calif

Dear Mr. Whitby:

We are in receipt of your favor of the 24th and regret very much if you misunderstood our repur-

chase agreement, as we feel it is an equitable, fair proposition, and one that would be advantageous for you to execute, particularly if you are contemplating a new connection which would take you away from Oakland.

If you have any suggestions as to the basis that you would be willing to enter into a repurchase agreement, please be assured that we are extremely interested in trying to cooperate with you on it, and any suggestions that you have would be given serious consideration.

We feel that the Oakland territory has a great many possibilities and should be developed into an outstanding territory with many good installations.

We will send you some 8x10 cards under separate cover which we trust will be what you desire, although as you know they are individually prepared.

Relative to the prospect hesitating about placing a \$10.00 payment at the time of the sale, it is quite possible that with greater concerns you would feel this is unnecessary. The reason that we have set the proposition up wherein the collection of \$10.00 is made on an individual basis or a local basis, was to overcome the possible skepticism of the local merchant in feeling that he was putting up \$10.00 to an out of the city organization. But this being a local matter we do not think you should have any difficulty along these lines.

If you have any suggestions as to how you can arrange for an installation even though it is not profitable for us, we will be very glad to consider

it, as we will do everything possible to assist in making your territory successful.

With kindest regards and awaiting your suggestions, we are,

Very truly yours,

DIRECT-U-SYSTEMS

By.....

[Endorsed]: Filed Sep. 23, 1942.

GOVERNMENT'S EXHIBIT No. 67

May 3, 1939

Mr. L. C. Whitby
406 Breed Avenue
San Leandro, Calif

Dear Mr. Whitby:

We wish to acknowledge receipt of your recent letter, and you may rest assured that we really want to cooperate with you in every way possible. But we feel that by affording the prospect the opportunity of writing to the various other hotels in other cities, it would tend to slow up your sales in every way possible.

Electrical Directories have been installed in Portland in the Multnomah Hotel, the New Washington in Seattle, and also installations of Electrical Directories have been made in Pittsburgh, Newark, New Jersey, Texas, Virginia, Michigan, Illinois, and quite a few other places. We are confident that with this information passed on to the

prospective advertisers, that they will without a doubt have some friend or acquaintance in one of these cities, whom they will want to ask to contact many of the subscribers on the board, and they will wait for their return.

In reference to repurchasing your contract which we submitted you a repurchase agreement that we felt was equitable. While you state that we have not been out much money, you are quite mistaken on this idea.

While Mr. Marshall does work on a commission basis based upon the royalties that are received from the installation, as you know, it would be impossible to secure the services of any man without advancing certain monies to him to cover his traveling expenses, etc.

While this is a charge against them as advances would be credited from the royalties from future installations, it is nevertheless an outlay of money that it is necessary for us to make, and you can readily appreciate that advertising, printing, equipment, etc., does run into money.

We would be willing however to work out something along the following lines: That we would send a Division Manager in there and select another franchise operator, and pay you out of the transfer not less than \$750.00 and the balance from 50% of the monies we receive out of the lease rentals or royalties, until you have received the full \$1500.00.

We feel sure that you cannot help but admit that this is exceptionally fair and equitable. We regret

very much that this has not worked out for you as we had all anticipated, as we are extremely interested in getting that territory developed.

Mr. Marshall has advised us that you had years of experience in the Banking business and also what a high type man you were, and we can readily appreciate that you would be more happy possibly in the business you had spent many years in, and we desire to cooperate in every way we can in working your affairs around.

If you will advise us immediately if the above is acceptable to you, we will arrange to have it taken care of immediately to eliminate any possible delay.

With kindest regards we are,

Very truly yours,

DIRECT-U-SYSTEMS

By.....

[Endorsed]: Filed Sep. 23, 1942.

GOVERNMENT'S EXHIBIT No. 69

August 25, 1939.

Mr. L. C. Witby
406 Breed Avenue
San Leandro, California

Dear Mr. Whitby:

Your letter of the 16th was referred to me while I was in the north but I did not call on you as there was no definite news that I could give you and I know that you are extremely busy.

We have several prospects that we are endeavoring to close in that area and I have made three trips up north to interview applicants and I was, of course, extremely disappointed that Mr. Schmidt did not take on the territory as I was extremely interested and apparently the thing that has held him up was the adverse conversation with you.

In accordance with our agreement you were to cooperated in every way possible and it appears from the statements of your own letter that you were the direct cause of this territory not being closed and we had a very definite agreement with you of which we have fullfilled our portion and from your letter you apparently have not.

It would have been better had you advised Mr. Schmidt of the true situation on the agreement that you were to receive your monies in accordance with the terms of your agreement when the territory was transferred.

I note with interest and quite some surprise your reference to Mr. Warren and you may feel quite at liberty to take this matter up with him or anyone else you should so desire as we are abiding by our agreement and intend to do so as we are interested in placing that territory on a successful operating basis as we feel it offers unusual opportunities.

As I stated I was quite surprised by your statement that you intended to use the Lodge as a method of contacting Mr. Warren. As you know, I am a member of the same fraternity and one of

the portions of our obligations, as you must recall, was that we were not to use it as a personal gain.

We assure you that we are doing everything possible to get this territory reassigned but you placed in the agreement a time limit. Would appreciate your advising if you are exercising your option on this as we have other advertisements running and we don't desire to create more leads if you are going to take the matter over yourself.

Very truly yours,

[Endorsed]: Filed Sep. 23, 1942.

GOVERNMENT'S EXHIBIT No. 70

Phone Sweetwood 0419

L. C. Whitby
Franchise Owner
Direct-U-Systems
406 Breed Avenue
San Leandro, California

August 16, 1939

Direct-U-Systems
Los Angeles, Cal.

Gentlemen:

It has been three months since you agreed to take steps to dispose of my lease but I cannot see any progress.

The man Mr. Marshall saw last month was very much interested but I believe would not take it over because you had not returned my money. It

looked to him like you were selling the same thing twice. Your advertizments state \$1500.00 secured and returnable. He asked me if I had received my money back and dropped it when I said no. I would also know your explanation in that connection also. I had Mr. Marshall's assurance that you meant exactly that.

I expect to discuss it with my friend Earl Warren at our next lodge meeting and would like to know your standing on the ad.

Thanking you for your usual prompt reply.

I am, yours very truly,

L. C. WHITBY

Direct-U-Systems Direct Buying Dollars to You
and Tell Your Message

[Endorsed]: Filed Sep. 23, 1942.

GOVERNMENT'S EXHIBIT No. 71

Phone Sweetwood 0419

L. C. Whitby
Franchise Owner
Direct-U-Systems
406 Breed Avenue
San Leandro, California

August 29, 1939

Direct-U-Systems
Los Angeles, Cal.

Gentlemen: Attn Mr. Marshall,

Your letter of August 25th has several statements

I want to clear up. I never talked with your prospect, Mr. Schmidt, but with a mutual friend who I saw at a lodge meeting or he called by phone. It was he who wanted the information which I requested but did not get. He informed me that he was going to request his client to place the money in escrow to pay me off before he would sign up although I told him that I had given you a contract for re-sale.

I would still like an answer to my question. Neither Mr. White or I have ever been able to get a direct answer to any question we have asked which has been the reason we could never get started. If things had been ready at the start we felt that we would have gone ahead but before we could begin the securities I had pledged would not take care of the additional cost of salesmen and because we both felt that we were not getting cooperation. I decided to go after the job I told you about.

The reason I put a time limit on the agreement was because I wanted some action, which I had always been promised but did not receive. I would like to get this settled as soon as possible and assure you that I have and will always cooperate.

I still feel that since you are going to re-sell the franchise and since I am willing to such an agreement, some of my deposit could be repaid to me on the agreement for re-sale. It appears that you operate entirely on other peoples money since even if the equipment had been built it could be

used any where and was not necessarily tied up to me. I am sure the deposit was not used up for this district.

Yours very truly

L. C. WHITBY

Direct-U-Systems Direct Buying Dollars to You
and Tell Your Message

[Endorsed]: Filed Sep. 23, 1942.

GOVERNMENT'S EXHIBIT No. 73

C. I. McReynolds
Advertising

1010 Vermont Ave., N. W.
Washington, D. C.
. Tel: METropolitan 3134

Operator of
Direct-U-Systems
in the District of Columbia,
Maryland and Virginia.

Dec. 8, 1939.

Mr. C. W. Talbott, president,
Direct-U-Systems,
7225 Beverly Blvd.
Los Angeles, Calif.

My dear Mr. Talbott:

This will acknowledge receipt of your letter of Nov. 24 enclosing three photographs as per my request of Nov. 22. Thanks.

Government's Exhibit No. 73—(Continued)

As to your hope that things are progressing rapidly here, I regret to say that such is not the case. It is now two months since I signed an agreement with you and made a deposit of money to show good faith in my desire to make a success of this enterprise. Since that time I have expended approximately five hundred dollars more in expenses and advances to salesmen whom I could not get to work otherwise, and I fear there has been little, if any, result in a practical sense from this effort and expense.

On the one hand we are handicapped by the continuing efforts of the Robot-Map, and on the other by the fact that there has never been but one hotel actually signed up, and that is not one that we can sell so far as we can determine.

When I first met Mr. MacNeill here in Washington he told me that he did not know whether or not he had anything to offer me, and would take a day or two to look into the situation here. A day or two later he informed me that apparently the Robot-Map people had signed up but the one hotel—the Raleigh—and while they might be at work, it would seem that we had a good expectation of getting into this market with the electric Directory of the Direct-U-Systems.

Upon that basis we drew up an agreement, which you approved, and which contained a special provision whereby we could examine into the competitive situation and if we should mutually determine, by the end of the experimental or pre-

Government's Exhibit No. 73—(Continued)

liminary period on Dec. 31, that there is not a reasonable expectation of making a success of the effort here, we could and would cancel the contract, my deposit would be returned, and we would each write off our own loss in time, effort and expense.

It would look, from one point of view, as if that should be done.

However I wish to recount what we have tried to do in this two months. First we started on the Hamilton hotel, which is the only one that Mr. MacNeill has actually signed up.

I inserted an advertisement in a local paper, for salesmen, in response to which we talked to a number of prospects and selected two. Mr. MacNeill also arranged for me to interview another, with whom I made an arrangement to go to work.

Intensive efforts were made for two weeks, without any result whatever so far as concerns a signed agreement for a "listing". We did not secure a single one, and I am convinced that genuine efforts were made against difficulties and discouragements.

In the first place the Hamilton hotel, while a good hotel, is not one of the first rank. In the second place, it is Washington headquarters for the American Federation of Labor, and we encountered some sales resistance because of that. On the other hand it is well located, and the manager has been ready and willing to cooperate in every way.

Government's Exhibit No. 73—(Continued)

However, we felt that there was too much resistance to overcome; so Mr. MacNeill tried to get the Willard hotel, which is one of the really first-line hotels here; and I feel that if we could have secured that hotel we would by this time have had a fair trial of the merits of this promotional device, and I would have been by now in a position to decide, with reasonable knowledge of the true situation here, whether or not we could reasonably expect to make a success.

However, we did not get the Willard. We did have a sort of understanding whereby we could go ahead and try to sell the listings for that hotel, at our own risk should the hotel finally decide not to lease the desired space.

Upon that basis we did go ahead for four more weeks; the two salesmen who answered the adv. had by this time quit, as they could not make a go of it. I made an arrangement with the remaining salesman for advances, in order to keep him at work and get a fair survey of the market; and I am satisfied that he tried hard, covered the territory fairly well, and did the best he could; but he did not secure one single signed agreement to advertise in the proposed electric Directory. He did have an understanding with certain advertisers who appear in an "Index" which is placed in each room of the Willard Hotel, and some of these advertisers did agree to go on the electric Directory on special terms, which were justified by the fact that the Willard hotel would not agree to con-

Government's Exhibit No. 73—(Continued)

sider leasing space to the electric Directory unless these advertisers were taken care of, in the sense that they could either be persuaded to agree to advertise on the electric Directory, or we would not accept competitive advertising in that particular line or classification.

At any rate, we made a genuine effort; but time went on and we did not have the Willard hotel signed up; and conferences with the manager indicated that we were pretty much at risk in working on that hotel, and in any event it would still be some time before the matter could be definitely decided.

That left me with nothing to sell, and I discontinued sales efforts. As I have previously said, in these two months I have expended approximately five hundred dollars in an effort to survey this market and get into it sufficiently to base an expectation of final success; and I may say that if we had actually secured the Willard hotel, I do believe we would be successful in two or three months in filling a board, and I would have been willing to continue the expense, and get the first Directory installed and in operation, even if I did not make a cent of net profit on it.

However, we now have nothing to sell; it seems useless to try to sell the Hamilton hotel as the first one to be installed because I think sales resistance is too great.

Mr. MacNeill has canvassed all of the other hotels whom we consider suitable, and has not se-

Government's Exhibit No. 73—(Continued)

cured the consent of a single one, although several indicate that if they could actually see and examine this Directory in operation here, they would consider having it in their hotel.

We have thus a list of prospects consisting of the Capitol Park, the Annapolis, the Willard, the Washington, and others, not one of which will actually sign on the dotted line under present conditions.

For lack of a hotel to sell, we have no sales efforts being made, and thus are not making any progress toward a board or cabinet that we can install.

I think, and I am convinced, that both the hotels and the merchants are influenced by the efforts the Robot-Map people have made during these two months. They were at work when we made our agreement on October 6; we knew that, but it seemed to me that they might not greatly handicap us; they continued to work without any particular success, and I feel that this has been a substantial obstacle to our success, because it would have been better if they had succeeded in completing their board and getting it into operation in the Raleigh hotel; I am sure it would have been better for us, than for them to fail, so far, to complete the board they are working on.

As a result of this failure to get progress, and as a result also of our own sales efforts, they cut their price from \$156 a listing to meet our price,

Government's Exhibit No. 73—(Continued)

\$60. and this has ruined the market for the time being, as the merchants naturally feel, and say, that if they cut from \$156 to \$60 what sort of a cut are we going to make, and all the merchants have to do is to hold off and wait for a lower price; so they will not sign up.

As to the hotels, the competitive situation has had much the same effect. Robot-Map offers a hotel \$500 for the first year; I can't meet that price, and I was told frankly at the Mayflower hotel, which is one of the very best, and one that I desire much to have, that what we can pay is insignificant, and they get much more than that from one single display cabinet which is placed in the main lobby.

That may be true, but the cabinet in question contains the display of a jeweler, who can undoubtedly afford to pay \$100 a month or some such price for his display of jewels in the main lobby.

At any rate, the hotels we want say they want to see a Directory in actual operation, and in view of the damage that has been done in this district by the competitive efforts I don't see that they are not justified in asking this.

You and I may know or feel or believe that the electric Directory of Direct-U-Systems is far superior to the Robot-Map, but unless we can convince the hotels and the merchants of that, we can't turn our own personal belief or opinion into

Government's Exhibit No. 73—(Continued)
practical results in the form of contracts or agreements, and that is what counts.

In this connection I did not get any actual contact with the Robot-Map people until we started on the Willard (in spite of not having a contract with the hotel) and after we had started to make the fur fly on that, for a few days, two of the Robot-Map salesmen came to my office to talk to me and get some information; my salesman was here with me and we went over the situation, with nothing to conceal, and they admitted frankly that on the basis of \$60 a year we had much more to offer than they had, even at the same price; in fact, they hinted that they wanted a job with me, but I said that they would have to be free agents and entirely in the clear with their present employer before I would talk definitely about putting them to work, so they left, and I said if they were out of a job and free of obligations to anyone else, to come up and see me, but they never came back. I was informed, however, that the Robot-Map people immediately began to offer their service at our price of \$60 and so far as I know that is the basis on which they are working now.

We therefore have this situation to consider; we cannot secure the hotels we want until and unless we have a demonstrator actually installed and in operation.

We cannot renew our sales campaign until we have a definite hotel to sell, and after my expe-

Government's Exhibit No. 73—(Continued)
rience with the Willard, I want a signed agreement before I start any further sales expense.

As things stand, and without any modification of our present agreement, it is my feeling that I am justified in asking that the agreement be cancelled and my deposit of \$1500 returned to me, and I will take my loss on the expense and time and effort made up to this time.

I feel that such action will be consented to by your representative here, so far as he may have authority to act or render an opinion.

I also assume that you yourself would consent to such a termination of the effort, in view of conditions that have developed, and my sincere and earnest efforts to make a go of the enterprise.

However, I have this suggestion to make: I do not feel that Direct-U-Systems is simply looking for suckers to put up some money that they have an excellent chance of losing. I do not feel that Direct-U-Systems wants the franchise operator to take All the risk. It was impressed on me in dealing with Mr. MacNeill, and with yourselves by correspondence, that you felt that it is only right for a prospective franchise operator to show his good faith and his determination to make a genuine effort to succeed, bu putting up a certain amount of money; with that money up, he would not be inclined to accept defeat too easily; But, if conditions and circumstances should show that the particular field does not show a reasonable expectation of success after genuine efforts are

Government's Exhibit No. 73—(Continued)
made, it would certainly do Direct-U-Systems no good, and would not be their policy, to retain money which has not been honestly earned and which has done the depositor no good.

If this is the situation as to your policy, and we are mutually concerned in making every possible effort to develop this market in Washington, D.C. then perhaps we can take a look at a possible modification of our present agreement, and approach the problem from a somewhat different angle.

I do believe that we have gone as far as we can go by our present methods; obviously, we cannot secure the cooperation of the hotels, and their agreement for the necessary space, on our present approach; they may look at a photograph and listen to a presentation talk, but it doesn't get results. They won't let us have the space without an actual physical demonstration of the machine.

That is good psychology and I take it there is no argument about the advantages of an actual demonstration if one can be arranged. I assume that what you did in New York was to set up a sample Directory in the Grand Central Palace so the hotel managers, and the merchants who are prospects to be advertisers, could see it and how it actually works.

Then I assume that you are taking down that Directory and rebuilding it, to be installed in a definite hotel.

Government's Exhibit No. 73—(Continued)

That, it seems to me, is what we should do here; but I am not going to take all the risk of such a procedure, let the experimental or preliminary period come to an end on December 31, and then be committed to get my money out of the Directory, if I can find a hotel that will take it and merchants that will advertise in it. That wasn't what we talked would be the set-up when we made our agreement; and since I believe, and summe you do also, that the best basis for a permanent, satisfactory relationship is fair dealing on both sides, I equally assume that we can now come to a modification of the present agreement which will let us fairly divide the risks, and join in a common effort to go on to success.

I therefore make the following suggestion:

1. We consider that the present agreement is modified to permit of the following action, without prejudice to its terms and conditions as to cancellation of the agreement if the proposed operations prove to be impossible to carry out.

2. Direct-U-Systems will as soon as convenient construct a sample or demonstrator electric Directory which it will install in a hotel in Washington, D.C. to be selected as the place of the demonstration.

3. I will endeavor to secure as many listings as possible for such demonstration, without cost to the merchants, so that we can show as full a board as possible, together with a reasonable number of places of interest, and in every way have the cabi-

Government's Exhibit No. 73—(Continued)

net as complete as reasonably possible in order to present a good appearance and give to the hotel managers and merchants a demonstration of the appearance and operation of the electric Directory. There will, however, be no income from the listings on such demonstrator for the period of demonstration.

4. I will compensate the hotel for the use of the space for the period of the demonstration. Such hotel will be selected as soon as possible after acceptance of this modification of agreement by Direct-U-Systems and I will cooperate to the fullest extent in having the demonstration a success.

5. As soon as the demonstrator cabinet has been installed an effort will be made to actually sign up lease agreements for additional hotels. In this connection Direct-U-Systems must cooperate because the lease agreements are in its favor, and the franchise owner is only permitted to use such leased space because of the franchise agreement.

Obviously it is vital and essential to secure one, two or three hotels in order to give the enterprise a further trial. If after demonstrating the cabinet, no further hotels can be secured, then the agreement between us will be cancelled and my deposit returned to me.

If further acceptable hotels can be actually signed up by lease agreements so that we can have a sure basis on which to proceed, then

6. I will advertise for and secure salesmen, preferably at least three, whom I will direct in an

Government's Exhibit No. 73—(Continued)

intensive campaign to secure actual agreements or contracts for advertising on a cabinet to be specified; that is, we will select the hotel considered most likely to give us success, and will all of us work as effectively as possible to secure such a number of listings as will enable us to reasonably determine whether or not the effort will be successful.

I will advance to the salesmen the usual commission on each signed contract they secure, otherwise they will not work, and it is quite apparent that we cannot collect anything in advance from the merchants, as they will not pay anything until actual installation in the hotel in which the cabinet is to be permanently installed.

I will thus be at risk as to all commissions paid to the salesmen, conditioned on whether or not we actually go on to complete at least one cabinet in a designated hotel where it will be commercially installed as opposed to installed for a demonstration only. I am willing to take this risk and to pay such incidental expenses as may be necessary, in order to endeavor to make the business a success.

It is my opinion that the period of demonstration to hotel managers, after the demonstrator cabinet is actually installed, will be 7 to 10 days; and that following this, based upon signing up a definite hotel on which the salesmen will work, there should be a demonstrator period of about 30 days,

Government's Exhibit No. 73—(Continued)
which will give us time, if we work hard, to determine what the chances of success are.

7. If the chances of success are then considered to be reasonable, by myself and by your representative, the agreement under which we are now working will become final and in full force and effect; and the deposit of \$1500 will thereafter not be subject to demand to return to me.

If however the chances of success are then considered and determined to be reasonably such as not to give promise of success by good steady work and efforts, in the opinion of myself and your representative, then I am still to have the right and privilege to terminate the agreement and to receive back my deposit of \$1500, under like conditions as at present, that is to say, each party stands its and his respective expenses and losses incidental to the efforts made, neither has any claim on the other excepting my claim to receive back the deposit, and we will then close the matter on such terms; failure of the two parties to agree to give rise to arbitration of the matter.

I don't want any lawsuits and I don't want any improper advantage. I assume, as I have said, that if we can't reasonably make a success of this enterprise by reasonably hard efforts and plans, you don't want my money just because it is in your hands as a deposit; and I can't see why we can't continue a joint effort to put this business over, to which end I am willing to continue time, efforts and some reasonable expense and risk

Government's Exhibit No. 73—(Continued)

of incidental costs, and you ought to be willing to risk the cooperation required of you, principally the installation in a selected hotel in this district of a demonstrator cabinet.

If you agree, the present agreement between us will be considered to be modified accordingly, which means, as I see it, that you will not prepare a cabinet for installation for some three or four weeks; then time of transit, and then installation, say it could be installed somewhat before the 1st of February; if we could have it installed by Jan. 20, then we could complete the demonstration to hotel managers, and get a definite hotel signed up, by Feb. 1, which would give us the whole month of February in which to carry on the effort to secure merchants to advertise on the cabinet, and come to a final determination of prospects for success by the end of February. This is approximate, but gives you an idea of time limits, more or less.

I believe in your fairness and good faith, hence I expect that this modification will be accepted and agreed to by your company. Otherwise we cannot proceed further; that is evident from the fact that I have no hotel to sell, and the hotel managers will not lease space without actually seeing the appearance and method of operation of the Directory.

It is all right for you and me to believe implicitly that the electric Directory of Direct-U-Systems is superior to anything else; but we are not the people who are going to lease space in the hotels, nor

Government's Exhibit No. 73—(Continued)

the people who are going to pay money to advertise on the Directory.

They won't either one of them sign up without seeing an actual demonstration, and I am suggesting a way by which we can proceed to give them a demonstration, under a fair division of risks and expenses, and with a fair provision for a termination of our agreement if our efforts come to naught in spite of all we can do.

I heard that Mr. Marshall was going to come here for a visit of a day or two; I wish he would, so he could see what the true situation is.

He could also determine for himself, what I believe fully to be a fact, and that is, that we can secure the services of a competent, reliable electrician to make any changes necessary in the wiring of the cabinet; to rewire the cabinet for permanent installation; to add further listings by correctly wiring such further or additional listings; and by maintaining the cabinet in proper working order during the demonstration period, and after it is permanently installed in a selected hotel.

I would be glad to have your reaction to these suggestions, at your early convenience; and to assure you of my earnest and honest efforts toward success if we can proceed along these lines, for a further experimental or preliminary period which is necessary by actual existing conditions and the state of the market caused by the efforts of competitors and their disastrous cutting of the price to such an extent as to almost ruin the business

Government's Exhibit No. 73—(Continued)
here, for a time at least. It will take extraordinary efforts to carry out a successful campaign under such conditions, but it is reasonable to expect that we can do so if we work together along lines that are fair to each party.

Sincerely yours,

C. I. McREYNOLDS

[Endorsed]: Filed Sep. 24, 1942.

GOVERNMENT'S EXHIBIT No. 75

THIS AGREEMENT

made and entered into this 22nd day of October, 1940, by and between Direct-U-Systems, a California corporation with principal place of business at Los Angeles, California, herein termed "Lessor", and Arthur K. Barnes with permanent address at 401 Scott Place, Pasadena, California, herein termed "Lessee",

Witnesseth: That in consideration of these premises and the mutual promises of the parties, and of the consideration passing and to pass from each to the other, it is hereby agreed as follows:

1. Lessor grants to Lessee exclusive license to use, operate and maintain Lessor's so-called "Direct-U-Systems" for a period of three years from date, in the following-described territory, being part of the State of California, U. S. A., to wit:

Cities of Long Beach, Santa Monica, Glen-

dale, Pasadena, the area commonly known as Hollywood; the boundaries of which are considered on the east by Western Avenue; south by Santa Monica Blvd; the west by Fairfax Avenue; and north by the Hollywood Hills; also the city of Beverly Hills; the counties of San Bernardino and Riverside, Orange and the territory adjacent thereto as outlined by the attached map, excluding the city of Los Angeles except the area as herein specifically set forth and included.

2. It is agreed that the total number of Direct-U-Systems which Lessee may reasonably expect with due diligence to install and maintain within said territory is Four; but Lessor shall supply to Lessee all Direct-U-Systems Lessee may lease to install within the described territory hereunder; and if Lessee shall so lease and install Four Direct-U-Systems within the effective period hereof, then Lessee shall have the option to extend this Agreement in all its terms for an additional period of Ten years.

3. Lessor shall lease to Lessee, and Lessee shall take from Lessor, as personal property with title remaining in Lessor, certain Direct-U-Systems (with supplementary material) under the following terms:

(a) For each Direct-U-System: a lease rental of seven hundred fifty dollars (\$750.00) covering the first year after delivery by Lessor, and a lease rental of two hundred fifty dollars (\$250.00) for each year thereafter.

(b) In addition to lease rentals, Lessee shall pay to Lessor a royalty of fifteen percentum (15%) of all moneys received by Lessee for use of space on Direct-U-Systems, and thereto shall transmit promptly to Lessor a copy of each agreement made concerning space on each Direct-U-System leased hereunder.

(c) All said lease rentals, except as specified below, shall be due and payable thirty days after delivery by Lessor of the Direct-U-Systems concerned. All said royalties shall be due and payable upon receipt by Lessee of payment for space rented.

4. Lessee hereby at this time leases from Lessor two (2) Direct-U-Systems, and Lessee hereby remits to Lessor the amount of Fifteen Hundred Dollars (\$1500.00) as payment complete of first year's lease rental thereon.

5. Lessor shall deliver Direct-U-Systems to Lessee at any City railway depot designated by Lessee, promptly after receiving full specifications and shipping instructions from Lessee. On all Direct-U-Systems installed hereunder, Lessor shall maintain, replace or repair as made necessary by damage or mechanical failure, without expense to Lessee, and the Lessor guarantees and agrees that each Direct-U-Systems installed by Lessee shall be free from mechanical and other defects, and shall at all times continually operate, and Lessor shall hold Lessee harmless from any loss, damage or liability arising by reason of any defect or failure of operation.

6. Lessee shall have full use and advantage of all leases of locations for Direct-U-Systems secured in Lessee's territory and shall pay the rentals on such locations as he utilizes. Lessor and its agents shall cooperate with and assist Lessee in Lessee's operations hereunder, including assistance in training Lessee's salesmen, and shall give and/or loan Lessee on request, sales promotion material as per list attached hereto.

7. Lessee shall operate hereunder solely as a Lessee and independent contractor, and nothing shall be done or required hereunder which might constitute Lessee an agent or partner of Lessor, or by which Lessee may create any liability for Lessor not specified herein. This Agreement contains the full understanding between the parties, and no agent of Lessor is authorized to modify it, or to add other than reasonable items per Lessors instructions in spaces provided therefor. This Agreement supersedes and cancels all previous agreements between the parties.

In Witness Whereof the parties have affixed their signatures upon the day first written herein.

DIRECT-U-SYSTEMS

By C. W. TALBOTT

Pres.

Lessor

ARTHUR K. BARNES

Lessee

Lessee

ANTICIPATED INCOME AND EXPENSE

First Year

Breakdown on anticipated Income (gross and net) for the
First Year, based on 20 Spaces Rented at the rate of
\$156.00 per year for each space.

Income:

20 rented spaces at \$156.00 per year \$3,120.00

Expenditures by Franchise Operator:

Lease rental to Lessor.....\$ 750.00

Location lease (Max. 10%) Average
\$100 yearly 312.00

Selling Expense—should not exceed
20% 624.00

Sales Manager (if desired) 5%..... 156.00

Royalty to Lessor: 15%..... 468.00

Estimated total expenditures..... \$2,310.00

Net Profit to Franchise Operator, each in-
stallation 810.00

Lessee acting as his own Sales Man-
ager earning increase 156.00

Net Profit when Sales Manager is
eliminated \$ 966.00

Second—And Each Following—Year

Income: as above \$3,120.00

Expenditures

Lease rental to Lessor (Reduced from
\$750.00)\$ 250.00

Location Lease (Maximum: 10%) 312.00

Selling Expense — should not exceed
20% 624.00

Sales Manager (if desired) 5%..... 156.00

Royalty to Lessor: 15%..... 468.00

Estimated total expenditures..... \$1,810.00

Net Profit to Franchise Operator, each
installation \$1,310.00

Lessee acting as his own Sales Manager earnings increase	156.00
Net Profit when Sales Manager is eliminated	\$1,466.00

Eight installations First Year	\$7,728.00
Eight installations Second Year and Each Succeeding Year	\$11,728.00

EQUIPMENT

Direct-U-Systems will loan to Franchise Operator the following equipment:

1. 3 Electrical Demonstration Cabinets
2. 3 Illustrated Presentation Books, (Zipper Cases)
3. 6 Selling Suggestion Circulars
Furnished Free: Up to——
4. 200 sets Advertisers' Service Agreements Imprinted (quadruplicate)
5. 20 sets Hotel Lease Forms (triplicate)
6. Hotel Room Reminder Cards (as needed)
7. 200 Advertisers' Map Location Charts
8. 200 Letterheads—Imprinted with name of Franchise Operator
9. 200 Envelopes—Imprinted with name of Franchise Operator
10. Letters and envelopes multigraphed on above, filled in and addressed with names and addresses of Franchise Operator's prospects, from list furnished by him, with 2c stamps attached, shipped to Franchise Operator for his signature and mailing prior to Salesman's contact.
11. 250 Folders—To include in the advance letters.

Extra Equipment—If ordered additional to above;
shipped COD:

Letters as per Item 10, Letterheads and Envelopes printed, letters multigraphed, names and addresses filled in, no postage, per hundred.....	\$ 5.50
Electrical Demonstration Cabinets, each.....	7.50
Letterheads and envelopes per items 9 and 10, per 100 sets	2.50
Leather Zipper Presentation Books, including Selling Circulars, each	5.00
Direct-U-Folders, per 1M.....	10.00

[Endorsed]: Filed Sept. 24, 1942.

GOVERNMENT'S EXHIBIT No. 76

Verification of Assistance Given To Franchise Owner

Franchise Owner Arthur K. Barnes

Operating as: 401 Scott Pl.

Address..... City Pasadena

Assistance given on (dates) Oct. 21, 28, 30, Nov.
4, 6, 8, 12 & 14, 1940

By L. E. Marsh (name) as Division Mgr (title) of
Direct-U-Systems

☒ 1. Hotel: Helped sign location lease satisfac-
tory for first campaign:

Name: Hilton Location: Long Beach

☐ 2. Helped secure cooperation or acceptance of
local Chamber of Commerce.

- ☒ 3. Assisted in securing 2 Salesmen (also Sales Manager?.....), all as selected by Franchise Owner as a satisfactory starting organization.
- ☒ 4. Assisted at meetings in training and informing said sales organization.
- ☐ 5. Helped Franchise Owner find and rent suitable office quarters.
- ☐ 6. Assisted in compiling adequate list of prospects to be mailed special letters furnished by Direct-U-Systems, per agreement.
- ☐ 7. Approved by Mr. Ellison, Mgr., Hilton Hotel.

To—Direct-U-Systems, Los Angeles, California.

Your representative named above has done, or assisted me to do, each of the items checked. Accordingly, I have now received all personal assistance you agreed to furnish me, all supplies for use in my first campaign will be shipped direct, and believe that I will be able to carry out my part of our Lease Agreement without further assistance, except for reasonable help in securing future hotel leases.

Signed:.....

Date: Nov. 14, 1940.

AKB

[Endorsed]: Filed Sep. 24, 1942.

GOVERNMENT'S EXHIBIT No. 77

REPURCHASE AGREEMENT

This Agreement, entered into this 31st day of January, 1941, by and between Direct-U-Systems of Los Angeles, California, hereinafter referred to as the party of the first part; and Arthur K. Barnes of Pasadena, California, hereinafter designated as the party of the second part:

Whereas, the parties above entered into an agreement on the 22nd day of October, 1940, whereby the party of the second part did agree to lease and did lease two (2) Electric Directory Systems from the party of the first part, and did pay as advance lease rental the sum of \$1500.00.

The party of the second part has not taken delivery of the systems as provided in the above designated agreement, and the party of the second part does find himself as unable to fulfill his portion of the above designated contract.

The party of the first part desires to have the territory as provided for in the above contract developed whereby it can collect the royalties as provided under the agreement.

Now Therefore, for and in consideration of \$1.00, receipt of which is hereby acknowledged, and the premises and the mutual promises of the parties and the consideration passing and to pass from each other to other, it is agreed as follows:

1. The party of the second part hereby agrees to the complete cancellation of the agreement and does renounce and relinquish any and all interests

or claims in the agreement as entered into by the parties under the date of October 22, 1940.

2. The party of the first part agrees that it shall pay or cause to be paid to the party of the second part, 25% of all the monies it receives from any source either as lease rentals or royalties from the territory designated in the agreement after sales expense and cabinet costs have been deducted, until the parties of the second part have received the total sum of \$1500.00.

3. The added consideration for the agreement and promise of the party of the first part to pay to the party of the second part the monies as outlined in the above paragraph is based on the agreement of party of the second part to assist and cooperate with the party of the first part in developing and/or transferring of any rights in the territory as outlined in the original agreement.

4. Party of the first part hereby agrees to devote its best effort to place the territory covered by the agreement on a paying and profitable basis without unnecessary delay.

5. Party of the second part agrees to return or deliver the sales equipment loaned to party of the second part which is the property of the party of the first part, on demand.

It is mutually understood and agreed that this agreement, executed in duplicate, supersedes any and all previous agreements and contains the full

and complete understanding between the parties hereto.

DIRECT-U-SYSTEMS

By

Party of the First Part

.....

Party of the Second Part

Witness:

.....

Witness:

.....

[Endorsed]: Filed Sep. 24, 1942.

—————

DEFENDANT'S EXHIBIT B

Longacre 5-7482

11 West 42nd Street

New York, N Y.

Harold E. Weeks

Franchise Operator

Direct-U-Systems

August 25, 1939

Mr. C. W. Talbott

Direct-U-Systems

301 North Laurel Avenue

Los Angeles, California

Dear Mr. Talbott:

Friday, August 18, Mr. Wallace completed his instruction of six salesmen, Messrs. Farrell, MacNeill, Siering, Steece and Weil.

Monday, August 21, these six salesmen began canvassing for orders and we received one order for the Greeley Theatre, New Dragon, Manager, 857 6th Avenue, corner 30th Street. A copy of the lease and service agreement and two copies of the location chart are submitted herewith.

On Monday, August 21, Mr. C. S. Wallace, obtained a lease agreement from the Park Central Hotel at 55th Street and 7th Avenue for the installation of a Direct-U-Systems cabinet, and I hereby acknowledge receipt of a copy of this lease agreement from Mr. Wallace. As this hotel has 1,600 rooms and is a very much more desirable location for the installation of advertisements, from the advertisers' point of view, I expect to charge \$90.00 a year for an advertisement on this cabinet. My decision to charge this amount was made after conferring with my salesmen and others, and I should like to have your approval in this connection.

On Monday, August 21, Mr. Weil decided that he did not care to continue as a sales representative and I expect to replace him on Monday, August 28, with another salesman.

On Thursday, August 24, two orders were received, the first dated Aug. 23rd., from Willoughby Camera Stores, Inc., T. A. Riggles, Pres., 110 West 32nd Street. A copy of this order, together with two copies of the location chart are sent you herewith. The second order was received from the Chinese Village Restaurant, W. Y. Lee, Manager, 141 West 33rd Street. A copy of this order together with two location charts are sent you herewith.

It was Mr. Wallace's recommendation that we start soliciting advertisements for a cabinet in the Imperial Hotel. There seems to be a great deal of sales resistance against this hotel because it's business has been deteriorating a great deal during recent years, and many people would give us adds for other hotels but not for the Imperial.

GJS

An International Service

The men worked very hard during one of the hottest weeks New York ever experienced, and we have a good many call-backs in connection with the Imperial and also prospects for boards in other hotels.

I am paying the salesmen a 20% commission, giving them \$9.00 cash on receipt of the first payment and \$3.00 cash immediately on receipt of the next payment.

With kind regards,

Very truly yours,

HAROLD E. WEEKS

HEW:AV

6 Incs. in Duplicate.

[Endorsed]: Filed Sep. 22, 1942.

DEFENDANT'S EXHIBIT E

LONGacre 5-7482

11 West 42nd Street
New York, N. Y.Harold E. Weeks
Franchise Operator
Direct-U-Systems

October 10, 1939

Re: Original 8" x 10"
Advertising CardsDirect-U-Systems
301 North Laurel Avenue
Los Angeles, California

Gentlemen:

Referring to my letter of October 6, 1939, I am happy to state that the cards mentioned in that letter were received in good order yesterday morning, October 9th.

I am especially pleased to know that you can make such excellent copies, in two colors, from the original cards.

Please advise me how long it takes to obtain such copies, and the cost of making them.

This method of reproduction should be advantageous and economical, in case we later receive orders from an individual client for a number of

cards of the same kind, for installation in various locations.

With best regards,

Sincerely yours,

HAROLD E. WEEKS

HEW:AV

GJS

An International Service

[Endorsed]: Filed Sep. 22, 1942.

DEFENDANT'S EXHIBIT H

L O n g a c r e 5-7482

11 West 2nd Street
New York, N. Y.

Harold E. Weeks
Franchise Operator
Direct-U-Systems

October 5, 1939

Direct-U-Systems
301 North Laurel Avenue
Los Angeles, California

Re: Leases with Hotels for Direct-U-
Systems Cabinets.

Gentlemen:

Referring to your letter of September 30, 1939, I have no leases for hotels other than the four mentioned in my letters of August 14 and August 25.

Copies of the leases for the Hotel Imperial, the Hotel Breslin, and the Times Square were sent in the letter of August 14, and a copy of the lease for

the Park Central Hotel was enclosed in the letter of August 25.

I have hesitated in going after the leases in other hotels pending accomplishment of the following:

1. A letter, or other power of attorney, giving evidence that I am empowered to sign for the Direct-U-Systems in connection with such leases. Please send me such a letter or power of attorney.

2. Completion of the installation of one cabinet here in the city which can be shown to the hotel management.

3. Receipt of a card, similar to Mr. Wallace's, which I can use when approaching the hotel management.

Mr. Wallace gave me to understand, over five weeks ago, that he had requested a card, such as I have mentioned in (3) above, for my use. On the attached sheet I have sketched what I would like to have on a calling card, to be used by me when calling on hotel officials, or members of the American Hotel Association, in connection with leases for the installation of Direct-U-Systems cabinets. If this copy meets with your approval, will you please have one hundred (100) cards of the best quality made up for my use, and I will be very glad to reimburse you immediately upon receipt of a bill for the same.

While I have not felt that I had the proper authority, without some written statement from you, to sign leases, I have had some of the hotels "sounded out" in connection with the possibility of placing cabinets in their lobbies. Such contacts

have already been made with the St. Regis, the Savoy-Plaza, the Hotel New Weston, the Governor Clinton, and the Pennsylvania Hotel.

The manager of the Hotel Pennsylvania, Mr. McCabe, stated that he had seen several of the cabinets in operation in the Far West, and that he was in favor of them. However, the Pennsylvania is a Statler hotel and it is the policy of the Statler system to permit no advertising of any kind in their hotels.

GJS

An International Service

Mr. Mulligan, President of the Hotel Biltmore, Mr. Price, Manager of the New Weston, and the Manager of the Hotel Wellington all gave the following reasons for not wanting a Direct-U-Systems in their hotels. They claim that they would not dare to recommend their guests to one store and not to another, as all important stores in their area were big customers of theirs. In spite of every argument we could give them, they said it was "dynamite". I might add that Mr. McCabe of the Pennsylvania, although he liked the System very much and even if they permitted its installation, would be afraid of advertising for the same reason given by the above stated hotels.

The publicity manager at the Savoy-Plaza stated that Mr. Marsh offered their management \$1,000 dollars for permission to install a Robot cabinet in the lobby of the hotel, to which the management agreed and signed a contract with him. Mr. Marsh

was unable to fulfill his contract, due to his inability to obtain advertisers.

This hotel, the Savoy Plaza, would be a most excellent one for us to install a cabinet in, and I would appreciate any assistance which you might give, to enable us to sign a lease at that location. Apparently the \$1,000 dollars' offer, plus the expectancy of a large number of guests attending the World's Fair, caused them to decide to make the contract with Mr. Marsh. At the present time it looks as though the manager is against installing a cabinet at our price.

Mr. Hylan has been in touch with Mr. Fredericks, the publicity man at the Governor Clinton Hotel, and presented our proposition to him. Mr. Fredericks was favorably impressed and promised to submit the proposition to the directors of the hotel. Up to date, no action has been taken by them. In soliciting orders for advertisers in the area around the Hotel Governor Clinton, for the Imperial, we found that a number of people would be glad to sign up for advertising on a cabinet in the Hotel Governor Clinton who would not consider the Hotel Imperial. I would appreciate anything that you could do to get us a lease at the Hotel Governor Clinton.

With best regards,

Sincerely yours,

HAROLD E. WEEKS

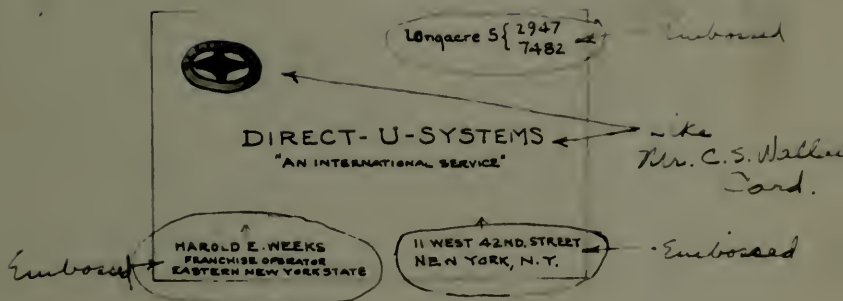
HEW:AV

Enc.

L'ongacre 5-7482

11 West 42nd Street
New York, N. Y.

HAROLD E. WEEKS
Franchise Operator
DIRECT - U - SYSTEMS



[Endorsed]: Filed Sept. 22, 1942.]



An International Service

DEFENDANT'S EXHIBIT I

[Penciled note at top of page]:

Thought you might want to see this eqpnt shipped ten days ago.

Harold Eastman Weeks, P. E.

Coordinating Engineer

11 West 42nd Street, New York, N. Y.

Room No. 2436

Telephone LOngacre 5-7482

August 8, 1939

Mr. C. W. Talbott,
Direct-U-Systems,
301 North Laurel Avenue,
Los Angeles, California.

Dear Mr. Talbott:

Your letter of August 6 reached New York late last night, and was in my hands the first thing this morning. I thank you for your comments relative to the Automatic Map Company.

I shall do nothing further at this time, in the way of investigating the situation with respect to the Automatic Map Company in this vicinity but, nevertheless, will keep my eyes and ears open, and will promptly advise you of any further information or developments concerning that company.

My request for "five hundred sheets of the same bond paper without letterheads" was to provide me with second and additional sheets for any communications requiring two or more pages, as it is not good practice to use the letter-head on sheets following the first, of a communication or report, and it is essential that all of the pages of such communica-

tions be typed or written on the same grade and weight of paper.

Herewith, you will find Prospect List Number Three, containing additional addresses of prospective advertisers, numbered 151 through 260.

The notes given in my letter of August 5th applying to Prospect List Number One will also apply to List Number Three.

Please consider that Prospect List 1, 2, and 3 will probably take care of present requirements, as Mr. Wallace recommended that only two hundred names be sent to you, to enable us to start operations.

I realize that there are other classifications to be covered, and that you may expect other prospect lists from me up to the total of four hundred names covered in our contract, but please do not hold up any equipment for any names beyond those included in Lists Numbers 1, 2 and 3.

With best wishes,

Sincerely yours,

HAROLD E. WEEKS

[Penciled note at foot of page]: You can take care of this.

HEW:AV

Inc.

GJS

[Endorsed]: Filed Sep. 22, 1942.

DEFENDANT'S EXHIBIT J

October 11, 1940

Mr. Harold E. Weeks
160 Fifth Avenue
New York City, N. Y.

Dear Mr. Weeks:

Please accept my apologies for not answering your letter of September 16th, but I have just returned to the city.

In March of 1938 I purchased the controlling stock of the National Directory Systems from Mr. C. W. Talbott for a substantial cash consideration.

In this purchase I acquired all of the interest or claims that Mr. Talbott had or may have had with the National Directory Systems, and he retired from the corporation.

There were no unusual circumstances connected with Mr. Talbott's sale, except I made an offer which he accepted, and I do not believe that Mr. Talbott has any claims or is a creditor of the National Directory Systems.

The National Directory Systems did not "blow up" as you state in your letter and it was taken over by myself as the principal stockholder and I did liquidate the major portion of its indebtedness.

An arrangement was made by the Automatic Map Company to purchase certain equipment which was to be built by the National Directory Systems, but these arrangements did not work out satisfactorily and this arrangement was cancelled.

It is true that certain of the personnel of the National Directory Systems was employed by the Auto-

matic Map Company, but this was only natural, as this personnel was experienced in this field, and inasmuch as the National Directory Systems had intended to be a servicing and manufacturing company, they had no need of salesmen.

GJS

While it is of no interest to the writer relative to the alleged statements in a report of the Better Business Bureau, that none of the operators for the National Directory Systems made money, we are quite confident that this is erroneous, as many installations were made throughout the country. Our experience has been that where a lessee failed to make money, it was entirely through his lack of ability, experience, or failure to be guided by the suggestions which the company made.

To the best of my knowledge the National Directory Systems never sold any franchises, but they did lease certain equipment to exclusive distributors who were in reality lessors, and their success or failure depended upon their own initiative or ability.

I succeeded Mr. Talbott as President of the National Directory Systems and retained that position until I disposed of my interest.

To the best of my memory, none of the former operators have any interest in any of the equipment which they leased, and anyone who would make purchase of any of this equipment would do so at their own risk, and with the knowledge they were buying equipment which the seller had no legal right to dispose of.

We note your statement that you have found maps used by the Direct-U-Systems, which were used by the National Directory Systems in an installation in the Waldorf Hotel.

The writer knows nothing of this, but it is quite possible that the same map maker furnished the drawings and used the same scale. It would be rather difficult if they used the same area, to produce a different map.

To the best of my knowledge there is no relationship between the Direct-U-Systems and the National Directory Systems, as I am familiar with the stockholders of the National Directory Systems, and I know that none of its stock is held or controlled by others than those well known to me.

I do not know why you should have so many inquiries from people, as to the Attorney handling the creditors of the National Directory Systems, for to my knowledge there were no creditors in the East.

I trust that this is the information you desire.

Very truly yours,

AUTOMATIC MAP COMPANY

By

RWY:M

[Endorsed]: Filed Sep. 22, 1942.

DEFENDANT'S EXHIBIT K

Longacre 5-7482

11 West 42nd Street
New York, N. Y.Harold E. Weeks
Franchise Operator
Direct - U - Systems
October 19, 1939Direct-U-Systems Re: Stationery
7225 Beverly Boulevard
Los Angeles, California

Gentlemen:

The blank calling cards with the embossed, colored insignia of the American Hotel Association were received on October 17. I appreciate your kindness in sending them to me and thank you for the same.

Please have two hundred (200) sets of letters and envelopes printed in accordance with the enclosed samples, and send them to me at your earliest convenience.

I enclose my check for \$5.50; to cover the listed price of these at \$2.50 per hundred sets, in accordance with your contract terms, plus 50c to cover postage.

Sincerely yours,
HAROLD E. WEEKSHEW:AV
Enc.

GJS

An International Service

[Endorsed]: Filed Sep. 22, 1942.

DEFENDANT'S EXHIBIT L

Longacre 5-7482

11 West 42nd Street
New York, N. Y.

Harold E. Weeks
Franchise Operator
Direct - U - Systems

October 30, 1939

Direct-U-Systems
7225 Beverly Boulevard
Los Angeles, California

Re: Cabinet to be exhibited at the National Hotel
Exposition.

Gentlemen:

Referring to your letter of October 28th, the stationery together with extra letters and envelopes reached me today. Thank you for hustling this shipment along.

The map has not yet arrived. Possibly it was sent, as the previous one was, by regular mail instead of by air mail, in which case it may be two or three days more before it arrives. At any rate, I will give it immediate attention and will wire you if there are any corrections or changes.

As previously indicated in my telegram of October 11, we are preparing the 8x10 cards here.

In connection with the 11½"x7" directory cards, please note additional information sent you herewith, on four (4) cards, B, D, E and G, which it will be advisable to include on these cards, if you have time. Also, a new copy of card R showing a correction concerning the Sunday hours.

There are certain areas and large buildings in New York City which are still supplied by Direct Current. My investigation of the three (3) locations involved with the first cabinet indicates that it will be highly desirable to have a Direct Current motor for this cabinet. If it is impossible to supply such a motor, send the Alternating Current one and I will substitute a Direct Current one for use in this office building.

Again I wish to recommend the desirability of using a so-called universal motor for any cabinets to be used in New York City, due to the prevalence of Alternating Current in some parts of the city, and Direct Current in other parts of the city.

With much appreciation of the splendid attention you are giving this first installation, I remain with best regards,

Sincerely yours,

HAROLD E. WEEKS

HEW:AV

Enc.

GJS

(Cut)

An International Service

(R)

C Museum

A Museum of Modern Art

B Open Weekdays 10-6. Admittance 25 cents

Sundays 19-6; 10 cents

[Penciled note]: In correct.

D Tel. CIrcle 5-8900 E 11 West 53rd Street

(G)

C Public Library

A New York Public Library

B

D Tel. BRyant 9-1500 E 5th Avenue & 42nd St.

77

(B)

C Art Museum

A Metropolitan Museum of Art

B

DTel. RHineland 4-7690

E 5th Avenue & 82nd St.

(E)

C Planetarium

A Hayden Planetarium

B

D Tel. ENdicott 2-8500

E Central Park W. & 81st St.

(D)

C Museum

A American Museum of Natural History

B

D Tel. ENdicott 2-8500

E Central Park W. & 79th St.

[Endorsed]: Filed Sept. 22, 1942.

DEFENDANT'S EXHIBIT M

Western Union Telegram

The filing time shown in the date line on telegrams and day letters is Standard Time at point of origin. Time of receipt is Standard Time at point of destination.

Received at 5375 Wilshire Blvd., Los Angeles, Calif.

9 Nov 8 PM 2 18

SY147 54 DL 4 Extra Duplicate of Telephoned Telegram.

Direct U Systems—

7225 Beverly Blvd—

Photographs of cabinet received Stop Congratulations and hearty thanks for splendid job well executed Stop Am extremely pleased Stop Kindly wire current of motor sent and when shipment was made Stop Please send four hundred copies four page gray descriptive leaflet by air mail to my office Stop Best regards—

HAROLD E WEEKS

The Company will appreciate suggestions from its patrons concerning its service.

GJS

[Endorsed]: Filed Sep. 22, 1942.

DEFENDANT'S EXHIBIT N

L O n g a c r e 5-2947
7482

11 West 42nd Street
New York City

Harold E. Weeks
Franchise Operator
Direct - U - Systems

November 9, 1939

Direct-U-Systems
7225 Beverly Boulevard
Los Angeles, California

Re: Cabinet to be installed at the Na-
tional Hotel Exposition.

Gentlemen:

The cabinet reached the Grand Central Palace yesterday, Wednesday afternoon, November 8th.

The express charges amounted to \$42.74 which were paid by the National Hotel Association. I refunded Mr. Walsh, the Exposition Manager, that amount in cash today. Enclosed is the receipt from the Railway Express Agency.

Your letter of November 6th was delayed in reaching me by one day, due to the fact that it was addressed to 11 East 42nd Street, instead of 11 West 42nd Street.

I have not yet opened the crate containing the cabinet inasmuch as the booth is not yet completely decorated, and carpenters and electricians are working in the vicinity. However, it seems to have arrived in good condition. Instead of finding the crate placed in an upright position I found it lying

on its side, and I trust that no damage has been done due to their placing it in that position.

I appreciate the information and instructions concerning the details that you mention in this letter.

I have arranged for an alternating current service, at an additional cost of \$3.00 over the cost of direct current for the cabinet, but will be unable to use this electricity before Saturday afternoon, due to the fact that they can not turn the current on while electricians are working on the circuits.

I very much regret the necessity of cutting down the cards, because I had previously carefully checked with you as to the size and weight, and received the information that the exact size was 8"x10", and that the stock that I had submitted was satisfactory. A number of our cards will have to be done over and some of them appear to have the letters and illustrations somewhat crowded and rather poorly laid out, due to the necessity of narrowing them to 7½ inches.

GJS

I appreciate the fine way in which you have taken care of the lettering and lighting for the installation at the Grand Central Palace and the subsequent installation at the Park Central Hotel.

Your suggestion concerning the sending of letters to prospective advertisers has been taken care of by one or another of the form letters, copies of which I sent you on November 7th.

My attention has been called to the fact that the 11½"x7" directory card for the toy store, F. A. O.

Schwarz, was incorrectly printed. I would appreciate it if you would have another card made up with this concern's name printed Schwarz instead of Swartz, as it now appears in the cabinet. Please send the corrected card to me as soon as possible by air mail.

I expect that the booth will be in such shape tomorrow, that it will be expedient to uncrate the cabinet. I am sure that we will be more than pleased when we have it set up and can have it tried out.

I heartily thank you for your wonderful cooperation, in doing such a fine job in so short a time.

With best regards,

Sincerely yours,

HAROLD E. WEEKS

HEW:AV

Enc.

[Endorsed]: Filed Sep. 22, 1942.

DEFENDANT'S EXHIBIT O

Longacre 5—2947-7482

11 West 42nd Street

New York City

40-008

Harold E. Weeks

Franchise Operator

Direct - U - Systems

“An International Service”

February 29, 1940

Direct-U-Systems

7225 Beverly Boulevard

Los Angeles, California

Gentlemen:

Yesterday afternoon, February 28, I received your air mail letter, dated February 26, referring to the freight shipments of the cabinet for the Imperial Hotel with the bill of lading covering this shipment, and the shipment of the new rotating machine for this cabinet by prepaid express.

The rotating machine arrived about noon today, and I waited for Mr. Musorofiti to come over from Brooklyn to uncrate it. The new rotating machine appears to be a very business like and well built device, and I congratulate you for finally sending me such an excellent appearing mechanism.

I shall be interested to see how it operates with 60 cards, and shall have to make them up, in order to try it out.

I also acknowledge receipt of a copy of the letter to Mr. Musorofiti, and he showed me your letter to him this afternoon.

Mr. Muscrofiti installed the revised rotator in the Park Central Hotel, and it ran successfully for a number of days. There were, however, 3 interruptions, and Monday morning, February 26, upon investigating a report from the hotel that the machine had jammed, he found 7 newly made cards badly torn and useless, due to the fact that the adhesive tape which you had put on the large wooden roller had melted, and otherwise ripped off, coating the cards and rollers with zinc oxide, or whatever the adhesive was, and placing the machine temporarily out of commission.

He brought the machine back to this office and has apparently rectified the trouble by the use of other material, and has been testing the machine carefully here prior to re-installing it at the hotel.

I am in hopes that he will re-install the rotator in the Park Central cabinet tomorrow, March 1.

I also wish to acknowledge one photograph of each of the letters of appreciation from the Empire State, Ind., the Metropolitan Museum of Art, the Frick Gallery, and the Little Church Around The Corner.

I understand that your Mr. Thomas E. Morgan is now in Philadelphia, and I am interested to know whether he has replaced Mr. Wallace, or whether Mr. Wallace who has recently been in several cities in Florida is still with you.

Very truly yours,

HAROLD E. WEEKS.

HEW:AV

[Endorsed]: Filed Sep. 22, 1942.

DEFENDANT'S EXHIBIT P

Longacre 5—2947-7482

11 West 42nd Street
New York City

Harold E. Weeks

Franchise Operator

Direct - U - Systems

“An International Service”

November 16, 1939

Direct-U-Systems

Re: Descriptive leaflets,

7225 Beverly Boulevard

Direct-U-Systems.

Los Angeles, California

Gentlemen:

Yesterday afternoon, I received two packages containing probably about 500 copies of the four page, descriptive pamphlet about the Direct-U-Systems.

I note that you had my name and address printed on these and I very much appreciate this, and I thank you for sending them to me. They will be very useful.

Very truly yours,

HAROLD E. WEEKS.

HEW:AV

GJS

[Endorsed]: Filed Sep. 22, 1942.

DEFENDANT'S EXHIBIT Q

Longacre 5—2947-7482

11 West 42nd Street
New York City

Harold E. Weeks
Franchise Operator
Direct - U - Systems
“An International Service”

November 16, 1939

Direct-U-Systems Re: Pictures of the Park
7225 Beverly Boulevard Central Hotel cabinet.
Los Angeles ,California

Gentlemen:

Yesterday morning I received 159 copies of the picture of the Park Central Hotel electric directory.

These will be very useful, and I very much appreciate your preparing them, and I thank you for sending them to me.

Very truly yours,

HAROLD E. WEEKS.

HEW:AV

GJS

[Endorsed]: Filed Sep. 22, 1942.

DEFENDANT'S EXHIBIT R

Longacre 5—2947-7482

11 West 42nd Street
New York City

Harold E. Weeks

Franchise Operator

Direct - U - Systems

“An International Service”

December 15, 1939

Re: Summary of all orders received.

Direct-U-Systems

7225 Beverly Boulevard

Los Angeles, California

Gentlemen:

Enclosed herewith, you will find a two-page summary of all of the orders for advertisements to be included in the cabinets for the Hotel Imperial and the Park Central, from August 21 through December 15, 1939, inclusive.

This tabulation shows the date of receipt of contract, the name and address of the advertiser, the method of payment, name of salesman, commissions paid to him, and the amount received on each contract.

You will note that all of the commissions have been paid in full, with the exception of the money due Mr. Hopkins, which he requested be held up until the first installment was paid to me, and the payment due to the Loewy Agency, in connection with the Merians contract, also \$3.00 due Mr. Corwin following receipt of payment.

You will note that my payments to the salesmen far exceed any money received by me on account. You will also note the extended terms for payment, necessary to close the contracts, and also the fact that most of these payments begin on installation.

It has been very difficult to sell advertising on a cabinet which could not be actually seen, and I strongly recommend that, in the future, any new franchise operator be immediately supplied with a cabinet, following the payment of his franchise fee to your company.

I shall begin sending you the 20% due you on all contracts, as soon as I am satisfied that the cabinet is properly installed and operating satisfactorily, and as payments are made by the advertisers.

With best regards,

Sincerely yours,

HAROLD E. WEEKS.

HEW:AV

GJS

Enc.

SUMMARY OF ORDERS

August 21—October 31, 1939, inclusive

Date of Contract	Hotel	Name of Advertiser	Address	Method of Payment	Sold by	Comm. Paid	Amount Received
Aug. 21	I	Greeley Theatre	6th Av. & 30th St.	\$10.00 Sept. 15; \$5.00 p.m. 10 mos.	Hylan	\$12.00	\$10.00 9/15
Aug. 23	I	Willoughby Camera Stores, Inc.	110 W. 32nd St.	\$10.00 Aug. 24; \$50.00 on installation	Hylan	\$12.00	\$10.00 8/24
Aug. 24	I	Chinese Village	141 W. 33rd St.	\$10.00 Aug. 24; \$5.00 p.m. 10 mos.	Hylan	\$12.00	\$10.00 8/24
Sept. 6	PC	Robert Thorne, Inc.	51 W. 57th St.	\$15.00 Sept. 6; \$7.50 p.m. 10 mos.	Hylan	\$18.00	\$15.00 9/6
Sept. 8	PC	Jean E. Marshall	Hotel New Weston Mad. Av. & 50th St.	\$15.00 Sept. 23; \$15.00 p.m. 5 mos.	Hylan	\$18.00	\$15.00 9/23
Sept. 8	I	Penn. Wine & Liquor Shop	201 W. 33rd St.	\$60.00 on installation	Farrell	\$12.00	
Sept. 9	PC	The Camera Place	812 7th Ave.	\$15.00 on instal. \$7.50 p.m. 10 mos.	Steece	\$18.00	
Sept. 15	PC	Carnegie Hall Auto Rental	155 W. 56th St.	\$15.00 on instal. \$15.00 p.m. 5 mos.	Hopkins		
Sept. 21	I	Schoepfer's Taxidermy Studio	1200 Broadway	\$10.00 on instal. \$10.00 p.m. 5 mos.	Rattray	\$12.00	
Sept. 29	PC	Merian's—Shoes	222 E. 57th St.	\$15.00 on instal. \$10.00 p.m. 7½ mos.	Ostro*	\$9. (in full)	
Sept. 29	I	Broadway Beauty Salon	102 W. 37th St.	\$10.00 Oct 30; \$10.00 p.m. 5 mos.	Ostro	\$12.00	\$10.00 10/30
Oct. 5	PC	Federated Detective Bureau	1451 Broadway	\$7.50 on instal. \$7.50 p.m. 11 mos.	Ostro	\$18.00	
Oct. 6	I	Charles C. Alehoff, D. D. S.	202 W. 34th St.	\$10.00 on instal. \$5.00 p.m. 10 mos.	Hylan	\$12.00	
Oct. 10	I	Larry L. Kronrot—Furrier	307 7th Av.	\$10.00 Oct. 10; \$5.00 p.m. 10 mos.	Hylan	\$12.00	\$10.00 10/10
Oct. 10	I	Benjamin Miller—Optometrist	134 W. 32nd St.	\$10.00 on instal. \$10.00 p.m. 5 mos.	Hylan	\$12.00	
Oct. 19	PC	Solmor Jewelry Co.	901 7th Av.	\$7.50 on instal. \$7.50 p.m. 11 mos.	Corwin	\$15.00	
Oct. 27	PC	Thomas J. Short—Chiropractor	55 W. 42nd St.	\$15.00 on instal. \$7.50 p.m. 10 mos.	Wilson	\$18.00	
Oct. 30	PC	Sonotone Corp.—Hearing Aids	19 W. 44th St.	\$90.00 on installation	Hylan	\$18.00	

*\$13.50 Commission due Loewy Agency on receipt of first payment.

SUMMARY OF ORDERS

November 1—December 15, 1939, inclusive

Date of Contract	Hotel	Name of Advertiser	Address	Method of Payment	Sold by	Comm. Paid	Amount Received
Nov. 1	I	Harry A. Burgio, Pod. G.	110 W. 34th St.	\$10.00 Dec. 1; \$5.00 p.m. 10 mos.	Wilson	\$12.00	
Nov. 7	PC	B'way Table Tennis Courts	1721 Broadway	\$15.00 Dec. 1; \$7.50 p.m. 10 mos.	Wilson	\$18.00	
Nov. 7	PC	LeRoy R. Stoddard, M. D.	33 W. 42nd St.	\$15.00 on instal. \$15.00 p.m. 5 mos.	Wilson	\$18.00	
Nov. 23	PC	Miss Julie's Dance Studios	136 W. 42nd St.	\$7.50 Nov. 28; \$7.50 p.m. 11 mos.	Wilson	\$18.00	\$7.50 12/3
Dec. 6	PC	Madam Zenda (Zenda Sterling)	154 W. 57th St.	\$15.00 Dec. 6; \$15.00 p.m. 5 mos.	Dwyer	\$18.00	\$15.00 12/7
Dec. 15	PC	Jay Lord Hatters	108 W. 38th St.	\$15.00 with copy; \$15.00 p.m. 5 mos.	Wilson	\$18.00	

[Endorsed]: Filed Sep. 22, 1942.

DEFENDANT'S EXHIBIT S

Longacre 5—2947-7482

11 West 42nd Street
New York City

Harold E. Weeks
Franchise Operator
Direct - U - Systems
“An International Service”

December 15, 1939

Re: Cabinet for the Hotel Imperial.

Direct-U-Systems
7225 Beverly Boulevard
Los Angeles, California

Gentlemen:

Please proceed with the manufacture of a mahogany cabinet for the Hotel Imperial.

As the mahogany in the lobby is very old, it has a dark brown finish similar to the sample color enclosed herewith.

This cabinet should be supplied with racks for sixty advertisers and twenty points of interest.

The map used may be the same as that supplied on the Park Central cabinet.

The points of interest may be the same as those shown on the Park Central cabinet.

To date, we have received only ten contracts for this cabinet, but the advertisers are already beginning to complain, because the cabinet is not installed. It will be necessary for me to have this cabinet installed within three or four weeks, or cancellations will be requested.

I am hoping to obtain additional advertisements for this cabinet by going after orders from large stores on a coverage basis, obtaining orders for six or more hotels at one time.

We expect to sign a contract with the Governor Clinton Hotel next Monday, December 18, and with the Piccadilly Hotel during that week.

Please insure that the aperture for the 8x10 cards on this cabinet be large enough so that all of the 8 x 10 cards can be seen.

I have decided that the white celluloid cards will be satisfactory, provided we can eliminate glare and obtain suitable lighting on the cabinet.

Please proceed at once with the manufacture of this cabinet.

With best regards,

Sincerely yours,

HAROLD E. WEEKS.

HEW:AV

Enc.

[Endorsed]: Filed Sep. 22, 1942.

DEFENDANT'S EXHIBIT T

Longacre 5—2947-7482

11 West 42nd Street
New York City

Harold E. Weeks
Franchise Operator
Direct - U - Systems
“An International Service”

December 22, 1939

Re: Lease agreement with the
Governor Clinton Hotel.

Direct-U-Systems
7225 Beverly Boulevard
Los Angeles, California

Gentlemen:

Enclosed you will find one (1) copy of the lease agreement between Direct-U-Systems and the Governor Clinton Hotel, covering the installation of a dark walnut cabinet for one year from the date of installation.

Due to the fact that the management at the Governor Clinton had previously signed contracts on two occasions with franchise operators for the installation of somewhat similar electrical directories, and these contracts had both been broken by the franchise operators, it was very difficult to get the management to sign up for a Direct-U-Systems cabinet.

Negotiations concerning this matter have been going on for three months and necessitated about eight calls, and a number of letters, before we were able to obtain acceptance.

Mr. Glenn agrees to sign further lease agreements, if the cabinet and its operation and maintenance prove satisfactory during the term of this agreement.

Very truly yours,

HAROLD E. WEEKS.

HEW:AV

Enc.

GJS

[Endorsed]: Filed Sep. 22, 1942.

DEFENDANT'S EXHIBIT U

Chelsea 2—7160-7161

160 Fifth Avenue
New York City
40-022

Harold E. Weeks
Franchise Operator
Direct - U - Systems
“An International Service”

May 6, 1940

Re: Directory Cards for Cabinets in the Hotel
Times Square, Hotel Breslin, and Hotel
Governor Clinton.

Direct-U-Systems
7225 Beverly Boulevard
Los Angeles, California

Gentlemen:

Referring to the orders sent you last week for the new Direct-U-Systems cabinets to be installed in

the Hotel Times Square, Hotel Governor Clinton and Hotel Breslin, I send you herewith two copies of your usual form for indicating the directory listings.

In order to conserve printing time and expense you may make up four copies of each of these listings using one set for each cabinet with the exception of listings No. 38 and 39 which are not included in all the cabinets (See lists sent you with the orders).

I would appreciate it if you would send me the fourth set, in order that I may have one to work on in case of a change of location or telephone number, or the addition of copy in "B".

For instance, Tiffany & Co. will probably move to its new building at the corner of Fifth Avenue and 57th Street, and will have a new telephone number, sometime within the next three months.

I trust that this procedure will save you time and expense in connection with the printing of these cards which should be on the same white celluloid material that was used in the Park Central and Imperial installations.

Referring to your letter of May 4, 1940, your suggestion concerning the use of a neon tube is unnecessary and would be too expensive.

We are having very fine results in using four 15 watt, Edison base, 120 volt, Mazda lamps mounted in porcelain bases backed by heavy galvanized iron reflectors which have been coated with aluminum paint, mounted in the rear of each 30 card rack, and similar units containing two 15 watt lamps mounted

in the rear of each 10 card "Point of Interests" rack.

By using the brass frames mentioned in my previous letter, a maximum amount of light is available for use through the celluloid directory cards, and the whole effect is excellent.

I will send you photographs and dimensions of these reflectors and lighting units as soon as we have completed the new ones for the Hotel Imperial cabinet.

GJS

Concerning the use of an electric time switch, I would report that such switches are too expensive for use on most of the cabinets which come under my jurisdiction because these cabinets have to utilize Direct Current.

I have been tipping the chief bell hops at both hotels fairly liberally from time to time, and they see that the electricity supplied each cabinet is turned on at 8 o'clock in the morning and off at midnight.

In addition to having the switches operated at the hours mentioned, the operation of the board is watched at these times and also at other intervals during each day.

If time switches were used, it would be necessary to get switches which operated over a period of 8 days or more; otherwise, they would have to be wound or set daily, and I find that the inspection interest and the cooperation of the bell boys is, in my opinion, very much more to be desired than the installation of the time switches.

Of course, I realize that your object in installing

the time switch is to insure that the motor operating the card changing device is not left on continuously.

However, I firmly believe that these bell boys are very loyal and honest in their attempt to carry out a verbal agreement with me, and that they are satisfied with the tips that they are receiving.

As you have completely designed the most recent rotating machine, it is my opinion that you should know the length of the chain belt required. Inasmuch as we are occasionally removing links, Mr. Musorofiti and I hesitate to advise what length of chain you should send, at this time, so I recommend that you send us 5 or 6 feet of your hardened chain and we will take care of the requirements on this end.

With best regards,

Sincerely yours,

HAROLD E. WEEKS.

HEW:AV

Encs.

[Endorsed]: Filed Sep. 22, 1942.

DEFENDANT'S EXHIBIT V

Chelsea 2-7160

160 Fifth Ave.
New York City
40-017Harold E. Weeks
Franchise Operator
Direct - U - Systems
"An International Service"

April 10, 1940

Direct-U-Systems
7225 Beverly Boulevard
Los Angeles, California

Gentlemen:

Having known Mr. Musorofiti for about 11 years, and having great respect for his ability and his workmanship in connection with electrical, physical, astronomical and other lines of endeavor, I have arranged for him to become an important part of my organization, in connection with my shop and laboratory for research and engineering development, and he became one of my staff on April 1st.

I know that he spent over double the amount of time he charged you for, during February, and I regret that his items were not more fully detailed to indicate just what he did. I am suggesting that in the future he give you a more complete account of just what he does.

In view of the fact that Mr. Musorofiti is now with me, you may see fit to engage someone else to service your cabinets. If so, I will endeavor to supply you

with the names of suitable persons to do this for you.

I have no interest or part in any remuneration you have paid or will pay Mr. Musorofiti. He has given you unselfish and devoted service and will continue to do so, if you see fit to keep him as your service man in Greater New York.

Very truly yours,

HAROLD E. WEEKS.

HEW:AV

GJS

[Endorsed]: Filed Sep. 22, 1942.

DEFENDANT'S EXHIBIT W

Direct - U - Systems

General Offices

Direct-U Building - 7225 Beverly Blvd.

Los Angeles, California

July 3, 1940

Mr. Harold E. Weeks

160 Fifth Avenue

New York City, N. Y.

Dear Mr. Weeks:

We wish to acknowledge receipt of your favor of the 24th and we are quite surprised that you are having any difficulty with the rotating machine, as we have them under operation for weeks here, and they do not fail at any time. If they should fail, there is no damage to the cards because the clutch overcomes that, and if you are having any difficulty at the Imperial with the cards tearing, it is

due to the fact that someone has readjusted the clutch on it, causing it to tear instead of just jam.

The only other reason that might possibly cause difficulty there would be the use of too heavy a card. We advocate the use of 180 M weight Bristol stock. We use a non-smearing lettering on it, so that it will not soil.

We have found that the major portion of the soiling of the cards is due to the fact that the paint comes off and gets on the rollers, and in this way it is carried on to the next card.

We wish also to acknowledge receipt of maps for the Breslin and the Times Square, as well as the quotation for furnishing of brass frames for the directory cards.

We would not be interested in going into such an additional expenditure as \$100 for three brass metal frames, as we feel that is out of line, and we are preparing the Times Square on a basis that we are confident that you will be more than pleased with.

We are very happy to advise you that we have received the Governor Clinton cabinet from the cabinet shop at last, and it is being wired now and we have every hopes to get it on its way to you very shortly.

Very truly yours,

DIRECT-U-SYSTEMS

By C. W. TALBOTT

Received Jul - 6 1940. Ans'd T/F

An International Service

[Endorsed]: Filed Sep. 22, 1942.

DEFENDANT'S EXHIBIT X

Direct - U - Systems

General Offices

Direct-U Building - 7225 Beverly Blvd.

Los Angeles, California

July 24, 1940

Mr. Harold E. Weeks

160 Fifth Avenue

New York City, N. Y.

Dear Mr. Weeks:

We have an applicant or two who are interested in some territory which has been included in the area assigned to you, and we would appreciate it if you would advise us if you would be interested in releasing the territory outside of New York City proper to us.

We would expect in return to compensate you for the release, and we would suggest that we would pay you a portion of the royalty that we would receive from any installation up state. We feel that this would be quite advantageous as we are confident that you would have more territory and more opportunity to develop in the city of the New York than you will ever take advantage of.

We would appreciate hearing from you at your earliest possible convenience on this.

With the kindest regards we are,

Very truly yours,

DIRECT-U-SYSTEMS

By C. W. TALBOTT

T/F

Received Jul 29 1940.

Ans'd.....

An Internatiional Service

[Endorsed]: Filed Sep. 22, 1942.

DEFENDANT'S EXHIBIT Y

Longacre 5-2947

7482

11 West 42nd Street

New York City

Harold E. Weeks

Franchise Operator

Direct - U - Systems

An International Service

December 26, 1939

Direct-U-Systems

7225 Beverly Boulevard

Los Angeles, California

Re: Publicity obtained through exhibiting cabinet
at the National Hotel Exposition.

Gentlemen:

About a month ago, I mailed you a clipping from the New York World Telegram concerning the cabinet which I exhibited at the National Hotel Exposition.

Herewith, I send you a clipping from the Flint (Michigan) Journal, dated Thursday, November 16, 1939, entitled "Machine Makes Problem of Getting Around in Strange City Easy One".

Herewith, I also send you a clipping from the Pontiac (Michigan) Daily Press of Thursday, November 16, 1939, entitled "Getting Around in Gotham Just a Matter of Buttons".

Mr. James F. Walsh, General Manager of the National Hotel Exposition, tells me that the Exposition received over 11,000 lines of publicity. He has a large volume of clippings concerning the Exposition, and I expect to send someone from my staff to Mr. Walsh's office to look over the clippings, and after this has been done, I will obtain additional clippings and send them to you.

Very truly yours,

HAROLD E. WEEKS

HEW:AV

Enc.

[Endorsed]: Filed Sep. 22, 1942.

DEFENDANT'S EXHIBIT Z

LONGacre 5-7482

11 West 42nd Street
New York, N. Y.Harold E. Weeks
Franchise Operator
Direct - U - System

September 26, 1939

Mr. C. W. Talbott
Direct-U-Systems
301 North Laurel Avenue
Los Angeles, California

Dear Mr. Talbott:

I wish to thank you for your letter of the 20th instant, in which you welcome me into your organization, and for your kind offer of any assistance which I might ask for.

I have accepted the position of sales manager with Mr. Weeks believing that my previous experience in advertising of a kindred nature, plus a very long and wide business experience in New York City and a thorough acquaintance with this city's hotels, qualifies me for the job.

In a spirit of trying to be helpful to all concerned, I wish to set forth a few of my findings both from the work of our salesmen and my own experience in the field.

We have been campaigning for a month with nine salesmen including myself, seven of these salesmen having been chosen by your Mr. Wallace. I would say that we are all good average salesmen. To date we have signed nine contracts, five for the

Imperial Hotel, and four for the Park Central. Personally, I have probably put in about one quarter of my time in the field and have sold five of the nine. These contracts have been secured from out of approximately 400 interviews. The percentage, therefore, is entirely too small for anyone to make money.

I wish to state my belief for the reason of this small volume of sales. Perhaps you know the New York market. However, as I know it and find it, I will say there are only about 15 hotels here for which from 40 to 50 contracts can be secured. The following are the hotels:

First class: Sherry Netherland, Savoy Plaza, Plaza, St. Regis, Waldorf, Ambassador.

Second class: Astor, New Yorker, Pennsylvania, McAlpin, Commodore, Biltmore.

Third class: St. Moritz, Taft, Park Central.

These hotels are in areas that attract the transient shopping. There are a number of large hotels, such as the Times Square, which we have under contract, the Dixie, the Edison, etc., in the Broadway area. The Broadway area today has practically no permanent, first class merchants. It has evolved into a "Coney Island". Even the better class of amusement enterprises can not make any money in this district. Hotels like the Imperial and Breslin, with the exception of 34th Street, are in a decadent district, and the Imperial and the Breslin are considered not any better than fifth class hotels.

The merchant in New York who will spend money for our type of service is not interested in hotels below a third class rating.

A very large percentage of the turn-downs we have had will reconsider when they can see a cabinet in operation. The same thing applies to some of the hotels we have tried to sign up.

In my opinion, our hope of success in this city depends on immediately installing and operating a cabinet.

I am personally very enthusiastic about Direct-U-Systems service, and nearly all prospects find it unique and interesting, but business is none too good in New York today, and people want to see in operation what they are asked to sign up for, for one year.

These suggestions are in no manner a criticism, but a desire to be constructive.

Very truly yours,

JAMES N. HYLAN

Sales Manager

JNH:AV

[Endorsed]: Filed Sep. 22, 1942.

DEFENDANT'S EXHIBIT AA

LONGacre 5-7482

11 West 42nd Street
New York, N. Y.

Harold E. Weeks
Franchise Operator
Direct-U-Systems

September 18, 1939

Re-Lease and Service Agreements

Direct-U-Systems
301 North Laurel Avenue
Los Angeles, California

Gentlemen:

Following your approval of a \$90.00 an advertiser charge on the Park Central cabinet, I had two new Lease and Service Agreement forms drawn up, two copies of each of which I send you herewith.

I did not have different colors of paper used on account of an increased cost of fifty percent over all white sheets.

In this connection may I ask what distribution you desire of the four different colored sheets of the sixty dollar Lease and Service Agreement forms? Mr. Wallace did not advise my salesmen, or me, regarding where the various colors went.

At present, I am keeping the original, giving the first carbon copy to the advertiser and am sending you a second and a third carbon copy.

As these are not at all clear in some instances, I am planning to send you two typed copies of the

originals; as you particularly need legible copies for making up the narrow classification cards.

I regret that I did not receive proof on the \$60.00 an advertiser, Lease and Agreement forms, for I should have changed the words "make all checks payable to the Company" to read "make all checks payable to Harold E. Weeks." In spite of instructions to the salesman to instruct the advertiser to make checks payable to me, today, I had to return a check, and ask for another, because it read, "Direct-U-Systems".

I can take care of this by having made up a rubber block out stamp and a rubber stamp showing my name.

Sincerely yours,

HAROLD E. WEEKS.

HEW:AV

(Cut) Allied Member AHA

An International Service

[Endorsed]: Filed Sep. 22, 1942

DEFENDANT'S EXHIBIT BB

11 West 42nd Street
New York, N. Y.

Harold E. Weeks
Franchise Operator
Direct-U-Systems

September 18, 1939

Direct-U-Systems
301 North Laurel Avenue
Los Angeles, California

Gentlemen:

This morning I received the mimeographed sheets of the "survey of the spending of guests in hotels", with the following various classifications:

300 rooms—34
500 rooms—45
600 rooms—52
1600 rooms—43

These tabulations will be of great assistance to my salesmen in their endeavors to secure advertisers for Direct-U-Systems.

I thank you very much for these survey sheets.

Very truly yours,

HAROLD E. WEEKS.

HEW:AV

(Cut) Allied Member AHA

An International Service

[Endorsed]: Filed Sep. 22, 1942

DEFENDANT'S EXHIBIT CC

11 West 42nd Street
New York, N. Y.

Harold E. Weeks
Franchise Operator
Direct-U-Systems

August 14, 1939

Mr. C. W. Talbott
Direct-U-Systems
301 North Laurel Avenue
Los Angeles, California

Dear Mr. Talbott:

The express shipment from Los Angeles reached here safely this afternoon, and I acknowledge receipt of the following items:

1. Six demonstration cabinets.
2. Six illustrated presentation books.
3. Six selling suggestions circulars. (I reserve the right to ask for six more, if necessary, on this, in the future).
4. Four hundred sheets advertisers' service agreements.
5. Forty sheets hotel lease forms.
6. Hotel room reminder cards. (Some received; more to be requisitioned from you, as needed).
7. Four hundred advertisers' map location cards.
8. Four hundred envelopes, "Direct-U-Systems, 11 West 42nd St., New York City."
9. Four hundred letterheads with my name.
10. Seventy-five multi-graphed letters, addressed,

with names of advertising prospects filled in, together with addressed and stamped envelopes.

11. Five hundred blank sheets of bond paper matching paper mentioned in Item 9.

I am expecting additional shipments from you of the balance of the multigraphed letters to prospects, with the names and addresses filled in, together with stamped and addressed envelopes to accompany the same. Thank you for your prompt cooperation in preparing and shipping the above mentioned items.

With best regards

Sincerely yours,

HAROLD E. WEEKS.

HEW:AV

(Cut) Allied Member AHA

An International Service

[Endorsed]: Filed Sep. 22, 1942

DEFENDANT'S EXHIBIT DD

L Ongacre 5-7482

11 West 42nd Street
New York, N. Y.Harold E. Weeks
Franchise Operator
Direct-U-Systems

August 15, 1939

Mr. C. W. Talbott
Direct-U-Systems
301 North Laurel Avenue
Los Angeles, California

Dear Mr. Talbott:

On Sunday, August 13th, I inserted an advertisement in the New York Times, which advertisement is shown in the attached sheet.

As a result of this advertisement, more than seventy applicants appeared at this office yesterday and today. We certainly had our hands full interviewing them.

Due to the present state of business in this city, many excellent men are still out of work, and Mr. Wallace and I were able to select some outstanding salesmen.

Last week, I rented additional space and fitted it up for Mr. Wallace to use in interviewing and training the salesmen, and I will probably continue to rent this space, so that the salesmen will have a place to meet, write and complete their records.

This morning, Mr. Wallace began training the following men:

Mr. Samuel Brady Steece

Mr. Warren W. McNeill (who happens to be an old friend of Mr. Wallace)

Mr. J. N. Hylan.

Tomorrow morning, we expect to add three more salesmen to our force.

Direct-U-Systems seems to have great appeal to the best type of salesmen, including many former executives and managers. It looks as though we would not have the slightest difficulty in getting all of the excellent salesmen we may require.

These men will probably start out after advertisements next week.

With best regards

Very truly yours,

HAROLD E. WEEKS.

HEW:AV

(Cut) Allied Member AHA

An International Service

[Endorsed]: Filed Sep. 22, 1942

DEFENDANT'S EXHIBIT HH

2607 Mira Vista Dr.
Richmond, Calif.
June 16, 1941

Mr. C. W. Talbott, Pres.
Direct-U-Systems
7225 Beverly Blvd.
Los Angeles, Calif.

Dear Mr. Talbott:

I have noted very carefully all that you have had to say in your letter of June 10th, and agree with you most heartily. No business can afford to allow such a territory as this to lie idle and unproductive. I, also, regret very much that the operation of this territory did not work out as I anticipated.

If the conditions are as you depict them, it should be an ideal time for you to resell this territory and by dividing it into several separate territories and allotting from one to three units to each as you have suggested it should be profitable to you.

I am ready at any time to enter into a repurchase agreement with you on a cash basis, and if you see fit to do that promptly, then the problem of the Sir Francis Drake board becomes no problem at all.

Yours very truly,
RALPH W. BERGEN
GJS

[Endorsed]: Filed 9/23/42.

DEFENDANT'S EXHIBIT PP

R. H. Bergen
Manager

YUkon 0820

Direct-U-Systems of Northern California

Franchise Owner

Direct-U-Systems

105 Montgomery St.

San Francisco, California

January 24, 1941

Mr. C. W. Talbott
7225 Beverly Blvd.
Los Angeles, California

Dear Mr. Talbott:

Wright's Billiard Salon is a very large and fine recreation centre with twenty-eight beautiful tables. It is very conveniently located with reference to the hotels, Mr. Schubert is the local manager.

He has been contacted and thoroughly sold on the benefits of Direct-U-Systems to his business, but states that Mr. F. P. Simpson, 514 Palisades Avenue, Santa Monica is the boss and he, (Schubert) cannot spend money for such things without Mr. Simpson's O.K. Simpson seldom gets up here, and Schubert suggests someone down there contact him and sell him on the value of our proposition. Can you have some one follow this prospect for me promptly.

I am badly in need of an additional supply of prospect letters as per attached copy and of the small photographs to be pasted upon them. Will

you please have 100 to 150 copies made up for me as promptly as possible.

Yours very truly,

R. H. BERGEN

RHB/s

Enc.

P. S. Do you have standardized bill forms for notification of the Customer when a payment is due on a contract?

Was there any approval ever secured from the business firms whose names were placed on the Sir Francis Drake Hotel board, or were they ever notified that their names were so placed?

Will you please give me the exact date of installation of the Sir Francis Drake Board, and the date from which the rental begins.

R. H. B.

GJS

(Cut) Allied Member AHA

Our Direct-U-Systems Direct Buying Dollars
to You and Tell Your Message

[Endorsed]: Filed 9/23/42.

DEFENDANT'S EXHIBIT No. QQ

R. H. Bergen
Manager

YUkon 0820

Direct-U-Systems of Northern California
Franchise Owner
Direct-U-Systems
105 Montgomery St.
San Francisco, California

January 17, 1941

Mr. C. W. Talbott
7225 Beverly Blvd.
Los Angeles, California

Dear Mr. Talbott:

I wish to acknowledge receipt of cards for "Town and Country" men's furnishers and Bloch's Beauty Salon. I have now received three different sets of 8 by 10 cards and in each instance they have been slightly damaged in the mail, corners bent or edges crimped, not beyond use but enough to mar the nice appearance and to possibly cause trouble on the machine. I would like to suggest some alteration in the wrapping to avoid this.

Also their card Town & Country is not made up precisely as wanted. However, as you say, there is too much wording in their copy. We will get new copy from them and then tell you more precisely how to make it up. The word "distinctive" is spelled "distintiva" on the card you sent. We will use it temporarily.

Now that we are beginning to place paid names on this board, I believe we should have the cards

placed in the hotel rooms. Will you please send cards for the Sir Francis Drake Hotel which has 600 rooms.

If a customer desires more than one change of copy per month on the display, is it best to have additional cards made up by your shop and if so, what is the charge? Or is it safe to permit them to have it made up themselves? What thickness and exact dimensions of card should be specified for them?

Very truly yours,
R. H. BERGEN

RHB/s

GJS

(Cut) Allied Member AHA

Our Direct-U-Systems Direct Buying Dollars
to You and Tell Your Message

[Endorsed]: Filed 9/23/42.

DEFENDANT'S EXHIBIT RR

R. H. Bergen
Manager

YUkon 0820

Direct-U-Systems of Northern California
Franchise Owner
Direct-U-Systems
105 Montgomery St.
San Francisco, California

January 17, 1941

Mr. C. W. Talbott
7225 Beverly Blvd.
Los Angeles, California

Dear Mr. Talbott:

We have asked you to assist us by calling upon T.W.A., Earl C. Anthony, Inc., and Hertz Drive Ur Self. Having heard nothing as yet, we wonder if it is not time to follow them up again.

I have two more such requests. We are advised by the Florsheim Shoe Company that all matters of sales promotion and advertising are handled by a Mr. Goodrich, advertising director, Florsheim Shoe Company, 541 West Adams Street, Chicago and that all policies are formed by him for their company as a whole. We have been requested by the local man to write directly to Mr. Goodrich. We believe that can better be handled by your office than by mine because of the national character.

I am enclosing a card of Godissart's. When we solicited these people, they recommended that a call be made upon their Los Angeles main office, Mr.

Berger being the party to see. Will you kindly make such a call and report to us.

Yours very truly,
R. H. BERGEN

RHB/s

GJS

(Cut) Allied Member AHA

Our Direct-U-Systems Direct Buying Dollars
to You and Tell Your Message

[Endorsed]: Filed 9/23/42.

DEFENDANT'S EXHIBIT SS

R. H. Bergen
Manager

YUkon 0820

Direct-U-Systems of Northern California
Franchise Owner
Direct-U-Systems
105 Montgomery St.
San Francisco, California

January 16, 1941

Mr. C. W. Talbott
7225 Beverly Blvd.
Los Angeles, California

Dear Mr. Talbott:

We have had some correspondence with reference to additional letters for the Sir Francis Drake Hotel bulletin board. In my last letter to you on this matter I told you that they would like about three each of additional vowels of the one inch size.

Mr. Malone this morning had occasion to be talking with Mr. Harrington of the Hotel personnel, and Mr. Harrington stated that they needed a whole new set of the one and one-quarter inch size and that Mr. Marshall had promised this to them.

In regard to this discrepancy in size, Mr. Malone has checked up this afternoon to be sure, and advises that the size they actually want is 1 $\frac{1}{4}$ ".

Will you please take care of this matter direct with the Hotel and see that they get what they wish in the way of letters.

My salesmen are asking me to send out "Follow-Up" letters to some of their prospects, believing that it would help them to close. If I send you a copy of what I wish can you make up mimeograph sets for me? Do you have any of my letterhead paper down there.

Yours very truly,

R. H. BERGEN

RHB/s

GJS

(Cut) Allied Member AHA

Our Direct-U-Systems Direct Buying Dollars
to You and Tell Your Message

[Endorsed]: Filed 9/23/42.

DEFENDANT'S EXHIBIT TT

R. H. Bergen
Manager

YUkon 0820

Direct-U-Systems of Northern California
Franchise Owner
Direct-U-Systems
105 Montgomery St.
San Francisco, California

Dec. 30, 1940.

Mr. C. W. Talbott, Pres.,
Direct-U-Systems,
7225 Beverly Blvd.,
Los Angeles, Calif.

Dear Mr. Talbott:

The additional supply of business cards and the 8x10 cards for the animator of the Sir Francis Drake Board have been received, for which I thank you. I installed the 8x10 cards this morning and they certainly make a great improvement in the appearance of the board.

When there this morning, I noted that the supply of small bulls-eye mazda lamps for the map is getting very low. I think there are only three left. Will you please send a new supply. Incidentally, will it be my responsibility to see to it that the hotel electricians are supplied with such materials, or will they correspond directly with you to obtain them? I would appreciate knowing the nature of the arrangement with the hotel electricians. Such information tends to make up a complete knowledge of the work on my part.

The hotel man responsible for changing the lettering on the lower portion of the machine, for use by the hotel, called my attention to the fact that the lock on that door has gone out of kilter. The key turns over and over without throwing the tumblers. It is impossible now to unlock the door. What do you suggest? Shall I call in a locksmith to make a new key, or would it be better to send a new lock, then have the electrician drive the pins out of the hinges and install it.

I was also told that the hotel would appreciate it if they had a few more letters. They need a few more vowels, about three each, in both sizes in order to be able to make up their signs as they wish to.

I thank you for the thoughts which prompted you to send the telegraphic Christmas greetings, which arrived at a very opportune time, while the whole family was gathered together just after Christmas dinner. I trust you had a very Merry Christmas, and wish you a Happy New Year.

Very truly yours,

R. H. BERGEN

Direct-U-Systems

rhb/s

GJS

(Cut) Allied Member AHA

Our Direct-U-Systems Direct Buying Dollars
to You and Tell Your Message

[Endorsed]: Filed 9/23/42.

DEFENDANT'S EXHIBIT VV

VERIFICATION OF ASSISTANCE GIVEN TO
FRANCHISE OWNER

Franchise Owner: R. A. Burke

Operating as: Burke Advertising Agency

Address: 625 Hyde Street, San Francisco, California

Assistance given on April 13, 1939

By A. Martinez, as Division Manager
of Direct-U-Systems

[✓] 1. Hotels Leased

Bellevue
Fielding
El Cortez
Governor
Golden State
Powell
Shaw
Sutter
Mark Twain
Clark

[X] 2. Assisted in securing 3 salesmen (Also Sales Manager (X)), all as selected by Franchise Owner as a satisfactory starting organization.

[X] 3. Received full equipment as outlined in the agreement (with exception of photographs which are to follow.

To: Direct-U-Systems

Your representative named above has done, or assisted me to do, each of the items checked. Accordingly, I have now received all assistance you agreed to furnish me, and all supplies for use in my first campaign, and believe that I will be able to carry out my part of our Agreement without further assistance.

Signed: R. A. BURKE

Date: April 20, 1939.

[Endorsed]: Filed Sep. 23, 1942.

DEFENDANT'S EXHIBIT WW

Pittsburgh, Pa.

Jany. 26th 1940

Mr. E. M. Schutt,
Cleveland, Ohio.

My Dear Earl:

Referring to the second paragraph of your letter of the 25th. You and I called upon the Auditorium, the Carter and also the Allerton. The only one that mentioned a service, or that seemed to know anything of an electric map, was the Allerton. And from what we were able to understand from Mr. Riley, he was a believer in the idea, in fact so much so, was willing to give a lease if he could be relieved of the one held by Robot. As I understand it, you were to call back on the other two mentioned the week I left for your answer. If it was

found that they had also given leases, of course this was something I knew nothing of. There is one thing sure, the Cleveland and the Hollenden made no mention of an objection from this source, instead, Mr. Marsh is somewhat friendly to the idea and I am satisfied this hotel can be secured if you keep after it, especially so inasmuch as the Fort Shelby of Detroit have given a lease. As to the Cleveland, Mr. Pierce made mention of the fact that he had been offered a service, we convinced him that it was not of the same nature, he seemed to favor our system and plan, promised to investigate. Am sure if you follow up this lead and especially with the assistance of Mr. Mark Regan you will succeed. I feel that you are simply jumping at conclusions when you say that it would be impossible for you to secure any leases from these people, in view of the fact that other hotels have given leases on another service. Why should they? The Cleveland and Hollenden have no interest in what the hotels you mention do. If they like the service, and certainly it is far superior to any other offered, they will take it regardless of what the other hotels think or do.

Answering the third paragraph of your letter. I certainly do believe that if you present to the hotels, even those that have given the Robot leases, your service, calling their attention to the drop display card and especially in view of the fact that it has the full endorsement of Mark Regan, Mgr. of the Cleveland Convention Bureau that he recommends it as an outstanding Civic Betterment, and

only because it contains this drop card display, giving you an opportunity of placing in the cabinet, pictures of points of outstanding interest of the city, something the other service can not do, that you can get them to consider you very seriously. As far as locations that have given no leases, you should have no trouble whatsoever.

[Printer's note: Referring to circled words in paragraph above, a penciled notation in the margin reads as follows: Mark Regan of Convention Bureau said he had seen board at N. Y. convention and that it seemed a good idea—BUT not to use his name as reference.]

The whole story, as I see it Earl is, As soon as you found competition in the field, regardless of the nature of it, that you have immediately lost heart, have thrown up both hands and have settled down to the fact that IT CANT BE DONE, Where as, there are a number of very favorable locations in the city of Cleveland that are just as good as the down town locations mentioned, on which, if worked, you can secure, that will pay you an equal revenue to any of the down town locations. It would seem to me that points of this nature should receive your attention, especially for the present and until such time as your competitor died out, which apparently will not be long, if the report given us by Better Business is correct. Then later when the down town hotels see that their leases are not being fulfilled, they will welcome you. In the meantime continue working such hotels as you know have given no leases. You have every advantage and

especially with the endorsement of Mark. Further, I am satisfied he will render you a lot of assistance if you will ask for it. Not alone from this source, but your standing in town is such, that many will assist you, if you will ask for their assistance, in helping you put it over.

To me it seems a shame that you should become so discouraged so early in the game. What would have happened to Ford or a few other of our successes if they had of scared out at the first sign of competition? There is nothing different about this. It seems to me, you should draw your belt up an-

GJS

other notch, **GO OUT AND PUT IT OVER.** Not waste a lot of time and effort in finding fault with an idea that is a **MONEY MAKER**, if properly handled. Think of the territory you have to work on. You have half a dozen cities you could work, even outside of the many favorable spots now available in Cleveland, any one of which will make you nice money.

There seems to be some differences of opinion between us in regard to your paragraphs four, five and six that I am not going to make an attempt to rehash at this time. As to your paragraph seven, I am a representative of the Direct U Systems and as such, feel naturally, they should be fully and promptly advised of any dissatisfaction which might arise in any territory I may be working therefore, you can rest assured, all correspondence that has passed between us, or that may pass between us, will be forwarded to them promptly. Insofar as I

am concerned, you will remain the owner of the franchise as assigned and as fully outlined in the contract. If any other arrangement, it will be between you and the company direct.

It would be my suggestion, that you go to work and put this thing over. It can be done, is being done and you are the boy that can do it, if you will just make up your mind and GO TO IT. Remember, there never was anything worth while handed to any one on a "Platter."

With best regards and trusting that you will
START THE WHEELS OF PROGRESS, I am,
Sincerely yours,

[Endorsed]: Filed Sep. 29, 1942.

DEFENDANT'S EXHIBIT XX

Pittsburgh, Penn.

Jany. 23rd 1940

E. M. Schutt,
Cleveland, Ohio

My Dear Earl:

I have delayed somewhat answering your letter of the 22nd, due to the fact that I have had so many interviews that it has been impossible for me to take the time off.

I can assure you of this fact, all I know of any other map company is just what you and I found out when we went to see Better Business. I was just as surprised to learn of a franchise having

been let to some one in Cleveland as you were. I had no concern over the matter, owing to the fact that the franchise operator seemed to be in trouble over his connection, Better Business having reported to the both of us that said franchise operator had taken the matter up with them, owing to the fact that he seemed unable to get them to answer his correspondence. As to any competition, on account of these facts, it looked as though there was none. To this you agreed after our interview.

Now, as to their having a number of leases on down town hotels, this is far from the facts. You and I called on all down town hotels and the only one that we found that had given a lease was Mr. Riley of the Allerton. Your prospects are good at the Cleveland, Carter, Hollenden and many other of the outside places that I called upon.

I can not, for the life of me, understand why you should feel like stopping operations at this time. While there appears to be some competition, it seems to me that you should make some attempt to investigate the nature of it, that is the nature of the board they are putting out. I think that if you will do this that you will not consider it competition. From what I am able to learn, having secured the information from B.B. the equipment is not like ours. I understand that it does not contain the "Display Card" which is the most valueable part of the service, this gives the advertiser a change of copy every thirty days in addition to the listing. Am sure that if you call the advertisers attention to this service, he cannot help but agree that ours offers much more for the money.

In regards to securing locations, you will agree that I called upon all hotels of importance in down town Cleveland with you. In the case of the Cleveland, it was a case of your working on them, the Hallenden, was a case of delay however you were to continue to contact them (I left the door open). The Carter, Mr. Thomas was out of town and you were to contact him last week and the many other points I called upon were to be contacted later by you and I left with you all of the necessary information for a follow up. Then I left with you a letter with a list of 7 different locations for you to have signed up by the Melrose Hotel System and in duplicate, copy of which you were to send me the next day. Mr. Melrose placed on this list 7 locations to which he agreed on installations. As yet you have failed to send me this letter. Will you please arrange to attend to this immediately.

Insofar as our having failed to fulfill our part of the contract, that is as to securing locations, you will remember that as soon as I arrived in Cleveland I asked you if I should get right out and line up five locations, your answer was to the effect that I should not worry about, all you wanted was the assurance that I would go around with you on a few calls, simply to allow you to get the hang of the approach as from then on you could take care of it yourself. Had you have stated anything otherwise you can rest assured I would have signed up 5 hotel leases and if you insist upon the fulfillment of this part of it, rest assured it will be done. The Melrose line takes care of that part of the agreement.

It seems to me, Earl, that you are becoming discouraged a little early in the game, you have not insofar as I can see, given the deal any kind of a work out. I can name a dozen locations, all good

GJS

which you will be able to secure with a little effort on your part. The idea of you becoming a little discouraged and feeling that it can not be done this early in the game, shows a weakness on your part that I never considered was in your make up.

As to my coming back to Cleveland and reselling the franchise, I have no intention of so doing. There is no reason for even considering such a move. You went into this deal in good faith, there was no misrepresentation in connection with the deal in any manner whatsoever, the company has fulfilled their part of the agreement in every manner and stand ready to offer you all of the assistance as is provided for in the terms of the contract. You might just as well make up your mind to the facts that you are in the Direct U Systems business, grit your teeth, forget the fact that there appears to be competition, get out and get some leases and go to work and put it over. It can be done and is being done.

You state in your letter that you were surprised to learn that I was to leave Cleveland when I did. If you will recall the conversation the Monday afternoon before my departure, you will remember that you stated you were fully satisfied with the manner everything had been handled and that you felt that from then on you would be able to work out everything that was hanging fire.

I am sending Los Angeles office your letter of the 22nd and also a copy of this letter so that they will know just how you feel in regard to the whole situation and I know you will hear from them immediately.

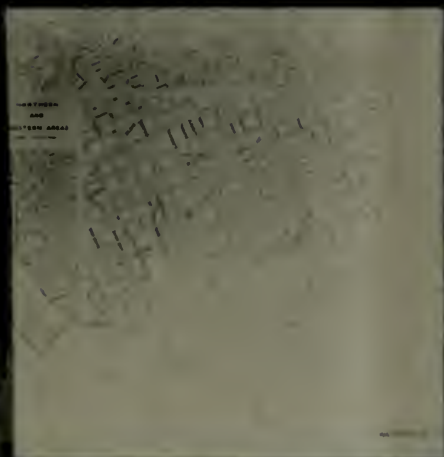
With best regards,

Yours truly,

[Endorsed]: Filed Sep. 29, 1942.

— DEFENDANT'S EXHIBIT ZZ —

HAMILTON HOTEL ELECTRIC DIRECTORY



ROTARY LUNCHEON

HAMILTON HOTEL

HAMILTON HOTEL

— ENDORSED : FILED SEP. 24, 1942. —

1009

DEFENDANT'S EXHIBIT 3A

C. I. McReynolds

Advertising

1010 Vermont Ave., N. W.

Washington, D. C.

Tel: MEtropolitan 3134

Operator of

Direct-U-Systems

in the District of Columbia,

Maryland and Virginia.

Jan. 10, 1940.

Mr. C. W. Talbott,
Direct-U-Systems,
7225 Beverly Blvd.
Los Angeles, Calif.

Dear Mr. Talbott:

I have had no acknowledgement of my letter to you of Jan. 3rd, and I much fear that delays are going to cost us the best of the seasonal opportunities, when merchants are allocating advertising budgets. If we get ready too late, we will have to wait a year, in some cases; therefore I hope that every effort will be made to avoid delay.

Please keep me posted on your progress on the cabinet intended for this city, so we can get our plans made at this end to make our mutual efforts effective.

Sincerely yours,

C. I. McREYNOLDS

CIM/M

GJS

[Endorsed]: Filed Sep. 24, 1942.

DEFENDANT'S EXHIBIT 3B

C. I. McReynolds
Advertising
1010 Vermont Ave., N. W.
Washington, D. C.

Tel: METropolitan 3134
Operator of
Direct-U-Systems
in the District of Columbia,
Maryland and Virginia.

Via Air Mail
Special Delivery.

Jan. 23, 1940.

Direct-U-Systems,
General Offices,
7225 Beverly Blvd.
Los Angeles, Calif.

Dear Sirs:

I attach hereto a clipping from this morning's Washington D. C. "Post" which tells of the resignation of Mr. Richard S. Butler as manager of the Hotel Hamilton.

This is the only hotel in the District of Columbia which was actually signed up for the installation of an Electric Directory of Direct-U-Systems, on which you are now working in accordance with our agreement to put on a demonstration.

I do not know what effect, if any, the resig-

nation of Mr. Butler as manager of the Hotel Hamilton will have; but obviously it would be well to hold up shipment of the demonstration cabinet until we can ascertain for certain that we have a place to put it.

The delay in securing an official map of the District of Columbia, and the delay in making up the demonstration cabinet, have been very discouraging; now comes this further uncertainty. I will, however, look into the matter at once and give you a further report.

Yours very truly,

C. I. McREYNOLDS

encl.

Butler Becomes
Hotel Manager

Appointment of Richard S. Butler as manager of Hotel 2400 Sixteenth Street is announced by Weaver Brothers, Washington realty firm. Butler has resigned as manager of the Hotel Hamilton and will take over his new duties tomorrow. He has previously been associated with the Manger Hotel chain since its entry into the Washington hotel field about five years ago.

Butler's early hotel training was received at the Princeton Inn at Princeton, N. J., and at the Hotel Seymour, New York City.

GJS

[Endorsed]: Filed Sep. 24, 1942.

DEFENDANT'S EXHIBIT 3D

C. I. McReynolds
Advertising
1010 Vermont Ave., N. W.
Washington, D. C.

Tel: MEtropolitan 3134
Operator of
Direct-U-Systems
in the District of Columbia,
Maryland and Virginia.

Feb. 1, 1940.

Mr. C. W. Talbott,
president,
Direct-U-Systems,
Los Angeles, Calif.

Dear Mr. Talbott:

I have your letter of Jan. 30, sent by airmail, as I am coming to the office for the first time in some days, because of illness.

I note that the cabinet for the District of Columbia is nearing completion, and I see no reason why you should not complete it at the earliest possible moment, and ship it on to be installed. I anticipate no action on the part of the Hotel Hamilton which would dishonor their agreement, and wrote you first as a matter of caution, also because there has been some labor trouble at the Hotel Hamilton, which is now settled; I enclose a clipping of a few days since speaking of this, and one

of last night which says that the trouble is settled.

I will take up with Mr. John J. Connolly, the new Manager, the matter of installing this cabinet, as soon as I have sufficiently recovered. In the meantime I cannot see that he can go back on the signed agreement.

I am still annoyed over the delay, as we should have gotten it installed before Mr. Butler left, and we could then have benefitted by the Jan. 30 President's Birthday Ball at the Hamilton. This would have given us some good publicity.

I also feel that you have been negligent in not getting at the matter of an official map, long ago. It is not right that I should be delayed by this oversight.

Sincerely yours,

C. I. McREYNOLDS

Hamilton Hotel Strike

By Thursday Threatened

Unionized employes of the Hamilton Hotel are prepared to act on a previously-taken strike vote if a new contract is not signed by next Thursday, James McNamara, international vice president, Hotel and Restaurant Employes' Alliance, announced today.

Mr. McNamara said the Labor Department's Conciliation Service had intervened in an effort to settle the controversy, but that thus far no progress has been reported. He said both the hotel and the employes were standing firm on their demands concerning wages.

Hamilton Signs
Contract, Ending
Threat of Strike

The Hamilton Hotel yesterday renewed the year-old contract with its 300 employes governing wages, hours and working conditions. This ended a month of dispute two days before a strike deadline that was set for tomorrow.

The contract includes closed-shop and check-off provisions, vacations with pay and arbitration of disputes. It forbids deductions for uniforms from the wages of maids and waitresses. Wages were left unchanged.

GJS

[Endorsed]: Filed Sep. 24, 1942.

DEFENDANT'S EXHIBIT 3E

VERIFICATION OF ASSISTANCE GIVEN
TO FRANCHISE OWNER

Franchise Owner: C. I. McReynolds

Operating as: C. I. McReynolds

Address 1010 Vermont Avenue City Wash-
ington, D. C.

Assistance given on (dates) from October
7th to October 21st, inclusive

By Warren W. MacNeill as Division Mana-
ger of Direct-u-systems, Inc., of Los Angeles,
California

- [X] 1. Hotels
Name: Hamilton Location: 14th & K Sts., Washington
Capitol Park Union Station Plaza
Also called on Willard, Shoreham, Wardman Park, Dodge, Mayflower and Washington. We expect to sign all or most of these Hotels.
- [X] 2. Assisted in securing 3 Salesmen (also Sales Manager [---]), all as selected by Franchise Owner as a satisfactory starting organization.
- [X] 3. Assisted at meetings in training and informing sales organization.
- [] 4. Helped Franchise Owner find and rent suitable office quarters.
- [X] 5. Assisted in compiling adequate list of prospects to be mailed special letters.
- [X] 6. To express my deep appreciation of the very fine assistance given me by Mr. Warren W. MacNeill, a man of high attainments, exceptional personality and thorough loyalty and trustworthiness.

To: Mr. Talbot:

Your representative named above has done, or assisted me to do, each of the items checked. Accordingly, I have now received all assistance you agreed to furnish me and all supplies for use in my first campaign, and believe that I will be able to carry out

my part of our Agreement without further assistance.

Signed: C. I. McREYNOLDS

Date: October 23rd, 1939

[Endorsed]: Filed Sep. 24, 1942.

DEFENDANT'S EXHIBIT 3I

Direct-U-Systems Map Location Chart

City..... District No..... Date.....

Business: Name..... Address.....

1. Write in plainly the names of all four streets around the block in which client is located.
2. At exact location, draw a rectangle with a cross inside it.
3. Make in duplicate (use carbon sheet) and forward both copies to

Direct-U-Systems, Los Angeles, California

[Endorsed]: Filed Sep. 25, 1942.

DEFENDANT'S EXHIBIT No. 3L

Martin M. Oslie

Phone 3270 R

Owner - Manager

Direct-U-Systems Of Colorado

Franchise Owner

Direct-U-Systems

~~1914 North 7th Street~~

Colorado Springs, Colorado

Dec. 19, 1941

108 Swope Ave.

Mr. C. W. Talbott

7225 Beverly Blvd

Los Angeles, Calif.

Dear Mr. Talbott;

The Directory at the Cosmopolitan Hotel was installed yesterday and I think the cabinet is very beautiful and the map is so plan that any stranger should understand it and find it much easier to get acquainted in town.

Will start working on sales for installing a directory at the Antlers Hotel at \$104.00 a space in Colo Spgs and one in Denver for the Brown Palace soon.

Wishing you a Merry Christmas.

Yours truly

MARTIN M. OSLIE.

(Cut)

Allied Member AHA

Direct-U-Systems Direct Buying Dollars to You
and Tell Your Message

(Envelope)

(Stamped) Colorado Springs Dec. 19 1941 4:30 PM
Colo.

Direct-U-Systems of Colorado

~~1914 North 7th Street~~

Colorado Springs, Colorado

108 Swope Ave.

Mr. C. W. Talbott

7225 Beverly Blvd.

Los Angeles,

California

[Endorsed]: Filed Sept. 25, 1942.

DEFENDANT'S EXHIBIT 3 O

Memorandum

To: C. W. Talbott

April 10, 1940

From: F. H. Boyer and G. H. Broderick

Subject: Your Two Letters of April 8 and Ac-
knowledgement of Rotating Machine Shipment.

* * *

The rotating machine arrived by express shortly before noon today. It was well crated and came thru in fine condition.

We are greatly pleased with this mechanism.

With Mr. Broderick's mechanical and electrical experience, we encountered no difficulty in placing the machine into perfect operation.

We are very enthused about the design and mechanical features.

We have run through your 60 test cards and they operate perfectly.

We note however, that the test cards are $11\frac{7}{16}''$
 $1/8$

x $9\frac{2}{16}''$,—as we have mentioned previously,—our cards are $9\frac{1}{2}''$ x $11\frac{1}{2}''$.

However, we have not yet tried them in the machine,—we shall do so this afternoon. It is quite likely that it will be necessary to trim our cards to the size of your test cards.

Since the arrival of the rotating apparatus, we are much more anxious concerning the arrival of the board proper.

So far we have been unable to get any information concerning the board as explained in our memo to you of April 8.

We have checked every available source in Detroit but,—this was all in vain.

We certainly hope that you will start a wire tracer from Los Angeles. Since you are on the “home ground”,—you are in a better position to follow the shipment thru.

From previous information, we estimated that the board should have been here yesterday or the day before.

Interest in Detroit concerning the Direct-U-Systems is now at a high ~~position~~ pitch and we are very anxious to climax this with a demonstration of the board. Each day we have telephone calls and personal inquiries asking when the board will be installed.

We do not want this enthusiastic fever to get away from us.

Again, we want to mention our pleasure with the rotating machine. We assure you that very soon we hope to have your men making duplicates of this apparatus.

FHB:JC

GJS

[Endorsed]: Filed Sep. 25, 1942.

DEFENDANT'S EXHIBIT No. 3P

Memorandum

To: C. W. Talbott

May 2, 1940

From: G. H. Broderick—F. H. Boyer

Subject: Return of Rotating Machine.

* * *

This acknowledges your telegram of May 1st and your letter of April 29.

In my brevity,—I fear that I might have misled you.

The condition is not sufficiently acute to justify sending the machine back.

In fact it will operate perfectly on cards that are perfectly flat, such as the 60 you sent with the machine.

However, when the cards have gone through the printing routine,—they acquire a “buckle” and this has doubtless been the disturbing factor.

Prior to the receipt of the machine,—we were unable to get paper size,—and the type of data

that we now have but,—believe we have nearly reached the point of “passable operation.”

* * *

Our next installations will probably also be a 20 card machine,—and if you wanted to get the rotating mechanism ready and send it to us,—we could then return this equipment to you but right now, even though it might jam occasionally,—we must keep it in operation so that we can carry out our future sales program.

The furthest from our mind now is the getting of letters and contacting of newspapers because we do not yet feel sure of the machine operation.

If the Mayor or the Governor should inspect the board,—we surely hope it will be operating. After we feel more certain,—we will make it a point to see that both of the above named and several other important people inspect the installation and give us a letter that will be very usable in your proposed program.

GHB:JC

GJS

[Endorsed]: Filed Sep. 25, 1942.

DEFENDANT'S EXHIBIT No. 3Q

Direct-U-Systems Economy Waste Receptacles
Office of
Geo. H. Broderick Secy.-Treas.

Telephone
Randolph 7730

General
Management
Corporation
409 Griswold Street
Detroit, Mich.

May 13, 1940

Mr. C. W. Talbott
c/o Direct-U-Systems
7225 Beverly Blvd.
Los Angeles, California

Dear Mr. Talbott;

It is indeed a pleasure to report the much improved operation of the card machine.

When we receive the "push shoes" I wrote you about the other day, I believe so far as the mechanical part goes it will be almost perfect.

On the enclosed sketch we have numbered the shafts as they would show looking in at the side of the machine away from the motor.

On shaft #5, are two black rollers in the center which have a very decided tendency for marking the cards.

Would it be possible for you to send us the same

rubber as contained on either #2 or #3? If so please rush them to us.

* * *

Also the center spring on the door that pushes the cards back marks them and I believe if you constructed a spring along the lines of those used in the typewriter to guide the paper around the roller that the marking tendency would be entirely overcome.

This spring does not push very hard and merely insures that the card after it leaves roll 4 and 5 is pushed back away so that it will not obstruct the next card coming through.

On the attached sketch I have undertaken to give you my idea.

If you can send us something of this sort we can drill it here and make the installation.

GJS

* * *

II

Sometime during the afternoon or evening yesterday, the button to the Club Imperial—#45, stuck and this morning we found the Imperial light still burning but one of the hotel lights burned out.

The clerk was at a loss to know what to do as he did not know which button was sticking.

However this was easily corrected and the board is now operating.

* * *

In one of your other letters you referred to our method of getting subscriptions.

In reality Mr. Talbott we are following exactly the same lines as on the original lease and service Agreement form.

The only difference is that we are stressing the furnishing of cards only on items of current interest today.

For example, the picture show will receive a card with their subscription also the shoe store may have one on the board occasionally.

However, we explain that we prefer to avoid the showing of regular bill board advertising.

We will be glad to put on a card announcing the receipt of a big shipment or a "special sale this week" or something of that sort but we do not want to load the board up with a whole mess of signs that simply say that the shoe merchant has good shoes or something of that sort.

In this manner, it will enable us to get a good price on many of the special attractions after we get things established.

you

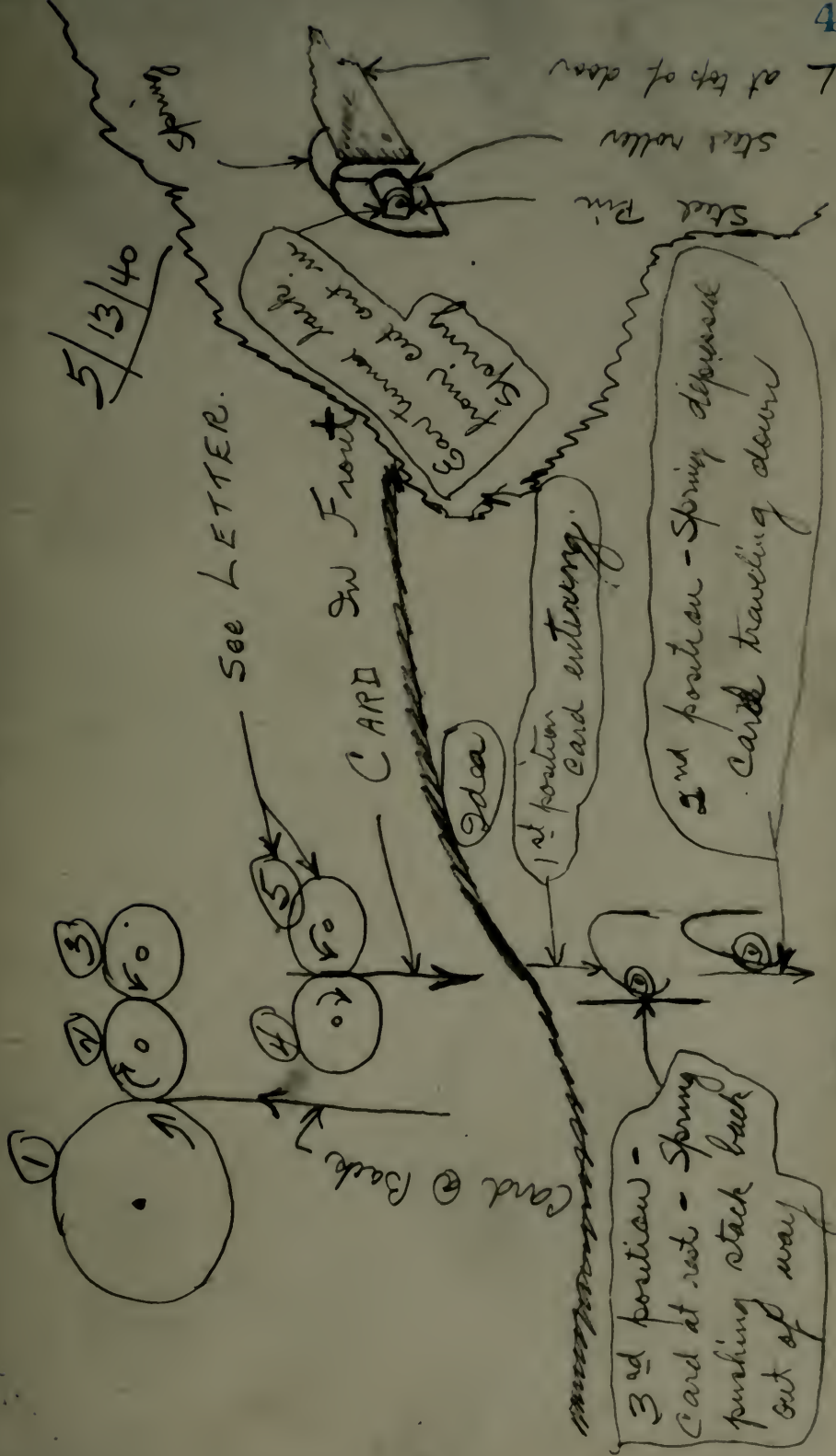
Hoping that ~~this~~ will be able to send us the push shoes and roller rubbers in the very near future and with kindest regards, we are,

Very sincerely yours,

G. H. BRODERICK.

GHB:JC

Enc.



[Endorsed]: Filed Sept. 25, 1942.

DEFENDANT'S EXHIBIT No. 3R

Direct-U-Systems Economy Waste Receptacles
Office of Geo. H. Broderick Secy.-Treas.

Telephone
Randolph 7730

General
Management
Corporation
409 Griswold Street
Detroit, Mich.

May 8, 1940

Mr. Talbott;

Your letter May 6th received and we will try to have the photographs made next week.

The rotating machine is running very much better and we have now started out on our contacts to get the Fort Shelby board fixed up.

In all probability, it will be only a 60 button board and the rotating mechanism will probably be for only 20 to 25 cards.

Incidentally, we find the machine operates much better on a stock like the enclosed sample so if you are going to do anything in this regard before we get definite instructions to you, we suggest you plan the layout on the basis of board like the sample.

Some nice compliments are beginning to come to us verbally and we will arrange to get some letters on the subject before long.

With kindest regards, we are,

Yours very truly,

GENERAL MANAGEMENT

CORPORATION

G. H. BRODERICK

GHB:JC

GJS

[Endorsed]: Filed Sep. 25, 1942.

DEFENDANT'S EXHIBIT No. 3T

June 5, 1941

Dayton, Ohio

A. Martinez—Div. Mgr.

Direct-U-Systems

Los. Angeles, California

Dear Sir:

As you no doubt recall, I had the pleasure last year of representing your firm in Dayton, Ohio, in connection with the sale of Commercial Listing in the Dayton Biltmore Hotel Electric Directory. My experience with this Directory was most satisfactory and profitable. The response of local merchants, Chamber of Commerce, and Hotel Management was most gratifying. It is with that remembrance in mind that I am writing this letter.

It has come to my attention that the franchise for this territory is about to be taken. Although I have an excellent position with OPM I am not adverse to making money on the side. Particularly as my present employment gives me many

hours of time which could be put to profitable use elsewhere.

Last year I handled all sales for the present Directory and would like to again assume that responsibility for the new franchise owner. Due to my knowledge of local business firms, their executives and past sales experience, I feel that I could completely sell the listings in the Directory in three to four weeks. I know that we could make a successful and profitable business out of such an item as your Electric Directory.

Please present this letter to the new franchise owner and request that he get in touch with me at his earliest convenience.

Trusting that we may again resume business relations in the near future, I beg to remain,

Sincerely yours,

CHARLES H. WHEATLEY

C. H. Wheatley

CHW/bg

P. S. I may be reached at the following address: Residence,

2620 Marcella Ave.

Dayton, Ohio

TA-5420

Business;

Office of Production Management

Mutual Home Bldg.

Dayton, Ohio

KE-5591

Ext-106

[Endorsed]: Filed Sep. 25, 1942.

DEFENDANT'S EXHIBIT 3W

DISTRICT MANAGERS GUIDE

MANUAL

OF

PROCEDURE

This Guide is written and distributed by The Direct-U-Systems, for the use of our District Managers or Franchise Operators.

It is a compilation of the methods of procedure employed by

Direct-U-Systems
in organizing local territory and merchandising
Direct-U-System service.

The District Manager's Guide

While the District Manager is responsible to Direct-U-Systems for certain phases of the business, and certain basic rules, he is in reality an individual contractor conducting his own business and should plan to build it into a permanent future.

Keep in mind at all times that you are Not selling Advertising but you are selling a real service. Direct-U-Systems renders a service that it is impossible for the merchant or professional man an opportunity to reach the traveling public or those that are conceded to be the "Money Spending" public in a new, unique and intelligent manner that it is impossible for them to reach in any other way.

BUT since the success of Direct-U-Systems is dependent upon the success of its local managers or

Defendant's Exhibit 3W—(Continued)

Franchise Operators as they are sometimes called, Direct-U-Systems has worked out a plan of procedure, based on experience, which if adhered to, will bring success to the Company, and all concerned with its affairs.

First—

Upon the agreement being entered into whereby a certain well defined territory has been, for the exclusive use of Direct-U-Systems, allotted to a District Manager, the Manager must then decide where in this territory he desires to start his first installation. He then decides in what hotels he is desirous of making his first installation.

Second—

A lease is then secured by the District Manager with the help or assistance if necessary, of the Home Office, or in the event a Division Manager of the Company is in the area he will assist.

Third—

Next, from a diversified list of different outstanding business organizations and professional men in that community, 200 names are chosen by the District Manager from the various classifications selecting only the highest type of representative in each classification. This list of names, future prospects, is then forwarded to the home office, who in turn prepare and send you 200 letters, all addressed and with the necessary postage affixed, ready for your signature. This procedure can be taken care of while the company's Division Manager is still with

Defendant's Exhibit 3W—(Continued)
you, as he will assist you in the details, etc., if you desire it.

Four—

Authentic Map of City and Transmit to Home Office.

a. Mark out with heavy lines the approximate square section which should be shown on the Map. The Map can take in about 25 long blocks, 35 medium; 45 if very short. Smaller scale than this makes it hard to show more than one or two locations in a block.

b. Write on margin of map the next city of any importance to which each main road leading off the section of map to be shown will lead.

In the same way note also those streets which lead off to airports, athletic fields or other important features not included in map.

c. With map send location chart (D-5) for hotel where map will be installed.

Five—

List of Gratis "Public Interest" Listings:

Compile this at once: There are many advantages from compiling this list at the very beginning and using it throughout the campaign.

a. It makes the Direct-U-Systems afford best possible service to the hotel guests, and will thereby directly interest the hotel.

b. By going out after permission to place these free listings the salesman must use, and thereby get in best shape to handle, the Selling Text and regular canvass; rather than salesman cutting his

Defendant's Exhibit 3W—(Continued)

teeth on a hard-boiled prospect who must pay money.

c. Through proper choice of features for the free spaces, the Franchise Owner and the Direct-U-Systems get valuable endorsement and request a letter telling of their opinion of our services; of specific organizations, churches, etc, of which the names will be on the map, such as City-Hall—(Mayor); Court House—(County Supervisor); City Library—(Librarian); Chamber of Commerce—(Sec. or President); Post Office—(Post-Master); Outstanding Churches—(Pastor); Parks—(Park Commissioner); Auto Club—(Manager); etc., and tell them due to our desire to render a service to the stranger, we compliment the costs to them.

d. After these gratis listings are settled, then when the first pay prospect is approached, he is not getting the first space on the board, but the twenty-first; and the preceeding listings are all parties with whom he will be glad to be associated.

Six—

The Local Manager will obtain and send into the Home Office a copy of the latest telephone book of their cities.

Seven—

It is advisable for the District Manager to have three filing cabinets. These are desk size and can be purchased from the 5 & 10 store. In one card box a list of cards corresponding with the names to which letters have been written is kept; this is the master file. A duplicate card is then made of each name. The duplicate cards are given to the

Defendant's Exhibit 3W—(Continued)

salesmen, seven each day to each man, two days after the letters corresponding to those cards have been mailed. On each correspondent card in the Master File, a notation is made of the name of the salesman that has been given that particular card and the date given to the salesman.

The salesman makes a complete report to the Manager of the result of his calls each day, if it is a call back or a future interview, that card is placed in the dated file under the date of the call back, to be given again to the salesman on the date of the call back.

The third file is a record of sales and payments, all information relative to this is written on the back of this card, and is put in the file under the letter of that customer's name. The information regarding the manner of payments is taken from the order blank.

All information on all cards is transferred on the back of the cards in the Master File; in this manner the manager knows by simply going to his file, who has been seen, and who has purchased, and all other data.

All sales are made on the stereotype order blank used by all district managers and are in quadruplicate. One copy being given to the purchaser, one copy is kept as a matter of record in the local office and one copy is sent to the Home Office and one copy for the salesman.

When an order is signed the salesman must be most careful in filling out his location chart, which is in triplicate—one for the local office record and

Defendant's Exhibit 3W—(Continued)

two copies going to the home office. All managers are required to check on all location maps, that there will be no mistakes in locating the place of business of the subscriber in the right block and at the right place in that block.

The salesman must secure the copy to be used on the 8x10 Display Card that is furnished and this copy must be forwarded to the Home Office.

Where the salesman brings in a check with the order, that is recorded on the back of that particular card and also the amount of commission which has been paid the salesman on that order is likewise recorded.

You will now note that you have a complete record of all transactions, and by turning to any card in your index, can secure the information on that particular case at first hand.

All men must turn in FULL reports on all calls made, and these are filed as explained elsewhere in this guide. Be sure that men get full reports and write same on the back of their prospect cards.

Matter of Compensation

The local manager of Franchise Operator is entitled to pay his men that commission which he desires, but we earnestly suggest that you pay your men a top commission, 20%, for by this method you get better men; they are better satisfied and you get much better results. There is sufficient profit in this business so that the local manager can well afford this expenditure.

Where a Sales Manager is employed, he is given an over-ride of 5% on all business done by all the

Defendant's Exhibit 3W—(Continued)

men. It is well to choose from the three salesmen, a man who has had some experience as a Sales Manager. In this way he also works and makes calls and gets the additional commission on his own sales as well as those produced by his men.

The Matter of Good Will

The matter of Good Will is an important function of the Franchise Operator. Remember that you are establishing your own business, that you are building for the future, that Good Will plays an important part in any business.

An alert up and coming business man creates Good Will through several channels. Personality, Service Rendered, and by taking an interest in his client's business and problems. It is well for the Franchise Operator to call on his clients, get acquainted, talk to him about his business, the results he is getting from Direct-U-Systems, etc. You need have no hesitancy in calling on a user of the Direct-U-Systems, it does the work, it actually directs customers to the subscriber's place of business and that is what he is interested in.

The Matter of Developing Territory

Your success is Our Success, we are more than anxious at all times to assist and help you in any reasonable way that we can.

Our method of operating has been worked out after much study and expense, we believe that we have covered every contingency. We are always happy to receive your suggestions as to how our service may be improved.

Defendant's Exhibit 3W—(Continued)

Eight—

It is necessary that the local manager keep a simple form of bookkeeping, a debit and credit system, where all cash receipts are recorded and where all disbursements are kept. In this manner the local manager has a double check on just where he stands and what has and what has not been paid in or paid out. These accounts should be recorded daily. If additional information is desired, request it from the Home Office.

Nine—

While it is necessary for the District Manager to have headquarters where he can keep his records, receive telephone calls and mail, and where he can receive his salesmen, he may maintain this in his home, or he may rent an inexpensive office or desk space at a cost of only a few dollars each month. For after all the listings for the Direct-U-Systems are not sold from an office nor by telephone and he will have only two or three salesmen.

The Matter of Salesmen.

(Where the Manager acts as his own Sales Manager as well as the executive head of the business.)

It is essential that all Franchise Operators be thoroughly equipped with a knowledge of this business; this knowledge he can acquire by studying our Sales Manual and material furnished.

The method of contacting Salesmen is by advertising in the local papers. It is not necessary that a man have previous sales experience, but it is desir-

Defendant's Exhibit 3W—(Continued)
able, in order to be able to sell Direct-U-Systems service.

Upon the applicant answering your "ad"; interview him and first sell him on the merits of our systems. Let him know at the outset that you expect certain things of him. One is that he must stick to the truth regarding Direct-U-Systems; that he must make no false statements. Be sure that he is equipped with the following necessities before you engage him:

- (A) Intelligence
- (B) Ambition
- (C) The desire and ability to work
- (D) He must be honest and be able to tell the truth.

After the interview, if the applicant appears to have all the necessary qualifications, give him a copy of the Sales Manual with instructions to study it. After you have interviewed and decided on two or three men that you desire to employ, arrange to hold sales meetings or classes.

At these classes have the men canvass each other, and you or your Sales Manager offer suggestions and corrections as they proceed. This procedure serves TWO purposes.

First: It assures you that they know their stories.

Secondly: It takes away a great deal of the timidity which a new man is sometimes faced with. Telling the men quite frankly that this is one of the purposes in having the men canvass each other in class.

Defendant's Exhibit 3W—(Continued)

It is certain, that if a salesman can intelligently tell his story in the office, before his fellow salesmen, he can then tell it properly to his prospect without timidity or fear.

If the Local Manager Employs a Sales Manager the same procedure is adhered to. It is the manager's duty to see to this.

Suggested Rules of Discipline

Under our system each man is supposed to make (5) complete canvasses each day. This does not mean (5) calls because he may have to make a dozen calls to conclude (5) complete canvasses or interviews.

IT HAS BEEN PROVEN that if a man will learn his story, stick to it, and thoroughly canvass (5) people each day the results will surprise him, he will positively do business.

ALL men must report to start their days work at 8:30 in the morning, receive their calls from the Sales Manager and after a short Sales Meeting proceed to work. At the morning meetings, the Sales Manager should hold a general discussion of yesterday's activities. What new objections have been encountered and HOW to overcome them. In this manner the organization is at all times being perfected.

It is a HUMAN failing that men become discouraged, NEVER permit this,—always have a cheerful word for the fellow who is crestfallen. He may prove to be your TOP MAN.

We Do Not subscribe to that old fashioned sales

Defendant's Exhibit 3W—(Continued)
method of Kidding salesmen along or furnish
“canned” sales talks, But we have found that a good
Honest pat on the back will do wonders for a man's
morale.

We have found from experience that men go along
sometimes for several days without doing much
business, and We Have Also Found that if these
fellows are working and making their calls and tell-
ing their story intelligently, that eventually their
work will tell and results will be produced.

Never “bawl out” the fellow who is working and
still not getting the results you expect, rather en-
courage him if he is working, he will come through.

We suggest that the District Manager submit to
the Home Office a detailed report of any interviews
made by the salesmen that did not result in “sales”
as it is possible that suggestions may be made to
overcome any difficulties.

Direct-U-Systems service is salable and is highly
desired by the better type of merchant or profes-
sional man if it is properly and intelligently pre-
sented. This service can be presented strictly as a
selective opportunity, the same as Rotary, Kiwanis,
etc, membership is selective.

Read and study the sales suggestions as well as
the Salesman's Guide so you will be able to present
Direct-U-Systems service.

We are not desirous of our District Managers
doing any “personal Selling” but we prefer that he
maintain the position of the Executive or Adminis-
trative head and in this way lend his efforts toward
a supervisory capacity.

Defendant's Exhibit 3W—(Continued)

Remember we are interested in your problems as it is through your success that we can all succeed. Keep us informed so we may be of assistance to you. The plan of operation and the equipment furnished you are the best that can be had, and have been developed after much expense, effort and experience has been used.

The contract forms have been developed to lend the greatest protection and yet are simple to use.

Care should be taken to furnish the details in filling out and checking the map location charts, the copy for the listing cards, as well as for the 8x10 Display Cards.

You are required to forward copies of the contracts and copy each day as received. In this manner it greatly assists the company in preparing the systems and to eliminate all possible delay in getting installations ready for shipment.

[Endorsed]: Filed Sept. 29, 1942.

[Endorsed]: No. 10298. United States Circuit Court of Appeals for the Ninth Circuit. Norman H. Marshall, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed January 25, 1943.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

United States Circuit Court of Appeals
Ninth Circuit

No. 10298

NORMAN H. MARSHALL,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

STATEMENT OF POINTS TO BE RELIED
UPON ON APPEAL AND DESIGNATION
OF RECORD TO BE PRINTED

The appellant hereby adopts as the points to be relied upon by him on appeal the assignment of errors appearing in the transcript of the record.

The appellant hereby requests that the Indictment and plea of the defendant thereto, the judgment and sentence of the court, the assignment of errors and the bill of exceptions be printed.

Dated: January 28, 1943.

AMES PETERSON

Attorney for Appellant.

Received copy of the within ----- this
28 day of January, 1943.

LEO V. SILVERSTEIN,

U. S. Attorney

CHARLES H. VEALE

Asst. U. S. Atty.

[Endorsed]: Filed Jan 29, 1943. Paul P. O'Brien,
Clerk.

No. 10298

IN THE

United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT

NORMAN H. MARSHALL,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

BRIEF OF APPELLEE.

CHARLES H. CARR,

United States Attorney,

JAMES M. CARTER and

CHARLES H. VEALE,

Assistant United States Attorneys,

United States Postoffice and
Courthouse Bldg., Los Angeles (12),
Attorneys for Plaintiff-Appellee.

FILED

NOV 23 1943

PAUL P. C'BRIEN,
CLERK

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No. 10298

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

NORMAN H. MARSHALL,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

BRIEF OF APPELLEE.

Statement of the Case.

An indictment was returned on July 30th, 1941, charging

HELEN MAY FAWKES;
LLEWELLYN F. MARSH;
ALBERT A. MARTINEZ;
CHARLES W. TALBOTT; and
NORMAN H. MARSHALL;

with a violation of Title 18, Section 338 and Section 88, United States Code. The indictment charged the defendants in ten counts with devising a scheme to defraud and the use of the United States mail of a great many persons, including those persons named as the ones to be defrauded by the sale of lease contracts, covering exclusive

territory for the use of a certain instrument known as a "Hotel Electrical Directory." The eleventh, or last count, in the indictment charged a conspiracy on the part of the defendants to use the mails of the United States in furtherance of a scheme to defraud. The indictment charges that the defendants would insert and cause to be inserted in the classified columns of newspapers throughout the United States, advertisements for resident managers in various localities, stating therein, that the business connection would be permanent and that the income would reasonably be \$6,500 or more yearly, and that a cash deposit varying in amounts, ranging from \$1,500 to \$3,750 was required and would be secured and returnable;

That the defendants, under the name of DIRECT-U-SYSTEMS, would mail letters to the persons intended to be defrauded, who had responded to the advertisements, and acknowledged receipt of the reply and state that a representative would call to explain the proposition in person; that the proposition was not a promotional matter; that the Company had nothing to sell; that it desired to select a person interested in a permanent connection with yearly increases; that the Company must virtually guarantee the success of the person so selected; that when a franchise holder found it impossible to make the large earnings promised to him by the defendants and would demand the return of his money, theretofore deposited with the defendants to guarantee his success, the defendants would, under the name of DIRECT-U-SYSTEMS, refuse to return such deposit of money or any portion, thereof, but would

offer to give in lieu, thereof, a worthless document known as a "Repurchase Agreement", wherein they would agree to pay the franchise holder a percentage of any moneys received by the defendants from others in the same territory, whom the defendants might induce to take a franchise;

That DIRECT-U-SYSTEMS was a Corporation organized under the laws of the State of California; was a Company of good reputation, of high integrity, of unlimited credit standing, and the exclusive manufacture of electrical directories for display in the lobbies of hotels; that a person who would become a franchise holder would be given the exclusive right to install directories in his territory and to rent space to business concerns, thereon, at certain stipulated weekly, monthly, or yearly rates, and to keep all moneys so derived, with the exception of that portion agreed upon to be returned to the Company, as royalties and that the franchise holder would have large earnings.

The indictment further charges that the representations so made by the defendants were false and untrue and known by the defendants to be false and untrue; that defendants, at a prior time, under the name of NATIONAL DIRECTORY SYSTEMS had conducted a business almost identical in nature with that of the DIRECT-U-SYSTEMS, and that such business so previously conducted had failed and gone out of existence. The defendants represented to various persons that electrical directories had been successfully installed in the States of Washington and Oregon by the DIRECT-U-SYSTEMS, when in truth and in fact,

such directories had been installed by the NATIONAL DIRECTORY SYSTEMS and had failed of success to the knowledge of the defendants, prior to the time such representations were made.

At the conclusion of the presentation of the government's case, the Court directed a verdict of "Not Guilty" as to the defendant, FAWKES. The government dismissed Counts Six and Seven as to all defendants, and at the close of the case, Appellant was convicted upon all remaining counts. Judgment and Sentence were entered October 19th, 1942, and Appellant NORMAN H. MARSHALL is now presenting an Appeal.

Questions Involved.

Appellant has stated in his opening brief that the whole question presented upon the Appeal is whether or not Appellant Marshall was acting in good faith in such connection, as he had with the selling of leases upon the advertising devise, referred to in the indictment, in so far as all counts in the indictment, except Count Eleven, are concerned. We agree with that statement. As to Count Eleven, another and different question is involved.

POINT 1: Sufficiency of the evidence to establish that appellant was not acting in good faith in the sale of leases upon the advertising devise, described in the indictment.

POINT 2: Sufficiency of the evidence to establish a conspiracy by the defendants to use the mails in furtherance of a scheme to defraud.

The Facts.

The uncontradicted evidence taken at the trial shows that appellant and his co-defendant had previously conducted a similar business under the name of NATIONAL DIRECTORY SYSTEMS; that efforts had been made at numerous places in the United States to sell franchises to various persons, and that many sales had been made; that the advertising devise was very similar in appearance and operation to a devise as used by DIRECT-U-SYSTEMS, as shown by defendants' Exhibit Z. Z. [T. R. p. 480.] This venture had failed prior to the time of the organization of the DIRECT-U-SYSTEMS. No profits had been received by any of the purchasers of the franchises, but the NATIONAL DIRECTORY SYSTEMS had received an appreciable sum of money in the sale of the franchises. With knowledge of this, the appellant and his co-defendants organized the DIRECT-U-SYSTEMS, operated the business upon the same plan which had been used by the NATIONAL DIRECTORY SYSTEMS, and sold, and collected from a large number of persons, including those named in the indictment, a sum of money amounting to many thousands of dollars.

These sales made by appellant and his co-defendants were the result of advertisements placed in newspapers throughout the country, and were consummated in each instance partly by the use of the mails, and partly by salesmen sent out by the Company for personal contact; that is to say, each purchaser was first contacted by mail and later by the salesman.

Each of the letters set forth in the respective counts in the indictment were admittedly mailed by the defendants, and each of the defendants had knowledge of the method of the business, and the fact that the mails were being used to conduct the business. Likewise, each of the defendants actively engaged in the business.

The appellant was actively engaged in the business from its inception to and including the date of the filing of the indictment, and in connection with his activities wrote many letters under his own signature, as well as the signature of C. W. Talbott and others.

It is also uncontradicted that in the course of the operations of the appellant and his co-defendants, Harold E. Weeks of New York City, Ralph H. Bergen of Richmond, California, Ralph A. Burke of Oakland, California, H. R. Brown of San Francisco, California, Cecil I. McReynolds of Washington, D. C., E. M. Shutt of Cleveland, Ohio and Elsie Whitney of Alameda, California, each responded to advertisements in newspapers, and each was contacted by the defendants or their representatives, and that each of said persons purchased franchises as a result, thereof, and that of such purchases so made by the respective persons, no profit was had by any of them, except Harold E. Weeks. In regard to Mr. Weeks, there was a conflict of testimony, since it was the contention of the appellant and he so testified that, in his opinion, Mr. Weeks had earned a profit, while on the other hand, Mr. Weeks testified that he did not receive any profit.

The evidence shows that the purchasers of the franchise were unable to dispose of the advertising space provided by the devise and that much of the space sold was cancelled because of the failure of mechanical operation of the electrical directory in some instances and, further, because of the inability of the franchise holder to obtain delivery of the electrical directory after it was ordered. As to those directories delivered, the evidence shows a total lack of successful mechanical operations, and the inability upon the part of the franchise holder to procure from the appellant and his co-defendants parts or repairs to correct faulty operation.

Each of the purchasers above named, with the exception of H. R. Brown, carried on extensive correspondence with the appellant and his co-defendants, with the view of being reimbursed for the funds advanced by them under the terms of their respective franchise agreements. In connection with their respective efforts, each was offered by the appellant and his co-defendants, a document or a settlement purporting to be a "Re-purchase Agreement" by the terms of which the territory was to be resold by the defendants to other persons, and the original purchaser was to be reimbursed out of profits to be earned by the new purchaser. In some instances, these Re-purchase Agreements were accepted and in others refused, but in no instance did any of the purchasers ever receive any return of his investment. The evidence does disclose Compromise Settlements in amounts much less than the original investment, but with the exception of H. R. Brown, it is uncontradicted that none of the purchasers received their original investment.

ARGUMENT.

Point 1.

The Evidence Is Sufficient to Establish That There Was a Scheme or Artifice to Defraud and That in the Execution of the Scheme, the Mails Were Used in Furtherance, Thereof.

There are two elements of the offense:

(a) The devising of some scheme or artifice to defraud and be the use of the mails in the execution or attempted execution, thereof, such misuse of the mails being the gist of the offense. The crime is complete when the scheme to defraud is devised and the mails are used to execute it:

Busch v. U. S. (C. C. A. 8), 52 F. (2d) 79;

Belt v. U. S. (C. C. A. 5), 73 F. (2d) 888;

Alexander v. U. S. (C. C. A. 8), 95 F. (2d) 873.

The appellant contends that he was acting in good faith in such connection as he had with the selling of leases upon the advertising devise described in the indictment. The Courts have said that good faith and honest belief of the truth of the representations made is a complete defense, provided the representations do not go beyond such an honest belief, and that the honest belief is in actual existence.

Where the scheme is based upon false and fraudulent representations, pretenses, and promises made to deceive and defraud, it is not a defense that the promoter believed he could make a success of the enterprise, or protect the investor against loss. In other words, he cannot make a wrongful matter right by pointing to the ultimate good intentions:

Foshay v. U. S. (C. C. A. 8), 68 F. (2d) 205;

Hymey v. U. S. (C. C. A. 6), 44 F. (2d) 134.

The undisputed proof establishes a plan or scheme on the part of the appellant and his co-defendants, and the use of the mails in the furtherance, thereof; and, further, that the scheme or plan was put into force and effect with knowledge on the part of the appellant that a previous venture in which he had been engaged, the NATIONAL DIRECTORY SYSTEMS, whose plan of operation was identical with that of the DIRECT-U-SYSTEMS, had failed definitely establishes a lack of good faith or honest belief on the part of the appellant and his co-defendants in dealing with those parties named in the indictment.

The testimony given by the witness, CHARLES S. WALLACE, a salesman, who was employed by the defendants for a period of two years and whose duty was to contact those persons answering the newspaper advertisements, definitely establishes that the defendants and, particularly, the appellant gave him his instructions as to what recommendations should be made and the manner and method of making them. [T. R. pp. 117 to 132.] He identified a document (Government's Exhibit No. 25) furnished to him by the appellant, which, in itself, refutes any contention on the part of the appellant that he was acting in good faith.

Among other representations made by the appellant and his co-defendants was that the DIRECT-U-SYSTEMS was a Corporation financially able to take care of its contracts. Yet, in a letter dated May 29th, 1940 to the witness, WALLACE, by the appellant and being a part of Government's Exhibit No. 27, excerpts of which are contained in record at pages 126 to 131, constituting admissions on the part of the appellant that upon that date and while appellant and his co-defendants were still seeking purchasers,

the financial status of the appellant and his co-defendants was contrary to the representations so made.

Again, it should be noted that the appellant testifying in his own behalf upon cross-examination admitted that he wrote a letter, dated August 8th, 1940, to Mr. Harold E. Weeks (Government's Exhibit No. 8), containing the following knowledge:

"As far as N. H. Marshall is concerned, he is not employed by us nor has he been, but is well known by us, as he was at the time the old National was operating, most successful, as the financial records will show. It was when he handled the sales and through his efforts and knowledge and hard work the most successful development was done, not only by the company but by the lessees. When he left the old National due to some personal and domestic difficulties, their decline started and when it reached a point that the writer did not care to be associated, he disposed of his interest and the old investors realized that they had made a mistake. And we are sure that if you knew him we are sure that you would agree. He is interested in some educational business, but we are sure that if you will write him addressed to him Post Office....., Hollywood, California, that it will be (114) forwarded to him and he will, we feel, be more than glad to assist in rectifying any reports that may be damaging to you or this company."

and that he signed the name of Mr. Johnstone" to the letter. [T. R. pp. 289 to 290.] We submit that that action on the part of the appellant establishes, beyond any peradventure of a doubt, a total lack of good faith or honest belief in connection with his activities.

Point 2.

The Evidence is Sufficient to Establish a Conspiracy by the Defendants to Use the Mails in Furtherance of a Scheme to Defraud.

This Court in the case of *Marino v. U. S.*, 91 F. (2d) 692, established and settled, the principals applied to the crime of the conspiracy. The opinion gives consideration to many of the outstanding conspiracy cases and defines conspiracy as:

“A conspiracy is a combination of two or more persons by concerted action to accomplish a criminal or unlawful purpose, or some purpose not in itself criminal or unlawful by criminal or unlawful means.”

Under the General Conspiracy Statute, there are three essential elements:

- (a) The conspiring together of two or more persons;
- (b) Either to commit an offense against the United States, or to defraud the United States; and
- (c) The doing of some act by one of the parties to effect the object of the conspiracy, termed an “Overt Act” (18 U. S. C. 88).

It is well settled in the *Marino* case, *supra*, that it is not material to the offense that the unlawful purpose shall be accomplished; that the plan agreed upon originated with the persons charged; that all of the members shall know each other; that any but the leading conspirators shall know the exact part the others are to perform; that all the details be planned in the beginning; or, that the plan agreed upon is to be executed by a single conspirator.

In the case at bar, the unlawful purpose was accomplished, the plan agreed upon originated with the persons charged, each of the members knew each other, each of the conspirators knew the exact part that the others would perform, all of the details were planned in the beginning, and the plan agreed upon was not to be executed by a single conspirator.

The appellant admittedly joined with the others at the very inception of the business and continued his connection up to and including the date of indictment.

The indictment charges in Count 11, thereof, the commission of numerous Overt Acts; the record is replete with proof of the commission of various Overt Acts, and the uncontradicted evidence is that all of the Overt Acts alleged were committed.

The appellant in his opening brief asserts that the whole question presented upon the Appeal is whether or not Appellant Marshall was acting in good faith in such connection as he had with the selling of leases upon the advertising devise described in the indictment. We believe that such a statement constitutes a false premise. The cases of:

Riper v. U. S. (C. C. A. 2), 13 F. (2d) 961;

Levine v. U. S. (C. C. A. 9), 79 F. (2d) 364;

Schwartzberg v. U. S. (C. C. A. 2), 241 Fed. 348;

and numerous others are authority for the proposition that all who, with guilty knowledge, join a combination formed for a criminal purpose within the purview of the Statute, subject themselves to the penalty provided, regardless of their participation or their lack of understand-

ing of the scope or membership of the unlawful combination. It is enough that the members agree to execute the criminal purpose and, of course, under the well established rule, the act of one conspirator becomes the act of all.

Hence, the question before the Court is whether or not all of the conspirators were acting in good faith. The appellant had not, up to the time of the indictment, severed his connection from the business, and not having done so, was bound by the activities of his co-conspirators.

Conclusion.

It is submitted that there is literally a mass of evidence in this case incriminating Appellant Marshall and involving him as the principal instigator and leader of the scheme charged in the indictment. When the whole case is considered, it is respectfully submitted that the Judgment of Conviction should be affirmed as to the appellant.

Respectfully submitted,

CHARLES H. CARR,
United States Attorney,

JAMES M. CARTER and
CHARLES H. VEALE,
*Assistant United States Attorneys,
Attorneys for Plaintiff-Appellees.*

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No. 10,298

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

NORMAN H. MARSHALL,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

BRIEF OF APPELLANT NORMAN H. MARSHALL.

Statement of Basis of Jurisdiction.

Appeal from judgment rendered against appellant Marshall by the District Court of the United States, for the Southern District of California, Central Division, upon a verdict finding the appellant guilty of violating Section 3381, Title 18, U. S. C. (commonly known as the Mail Fraud Statute) as charged in Counts 1, 2, 3, 4, 5, 8, 9, and 10, and guilty of violating Section 88, Title 18, U. S. C., as charged in Count 11. All of these counts, except Count 11, charged a substantive offense; Count 11 charged a conspiracy to violate Section 338, Title 18, U. S. C. Indictment, R. 2-57; Verdict, R. 60; Judg-

ments, R. 62-64.] The appellant was sentenced to a term of imprisonment of three years on each of Counts 1 and 2; and two years on Count 11, sentences on said counts to run concurrently with each other, making a total term of three (3) years, and sentence was suspended and placed on probation on each of Counts 3, 4, 5, 8, 9 and 10, the suspension of sentence and the probation periods to run concurrently with each other and commencing at the expiration of the service of sentence on Counts 1, 2 and 11. [R. 62-63.]

Thereafter, the appellant duly filed his Notice of Appeal from the said judgment against said appellant within the time prescribed by law. [R. 65.]

Thereafter, appellant filed an Assignment of Errors within the time prescribed by law. [R. 73.]

Thereafter, a Bill of Exceptions containing all of the evidence except the exhibits was prepared and filed. [R. 74-292.] By stipulation and order of Court all exhibits introduced at the trial were transmitted and certified to the Circuit Court of Appeals. [R. 71-72, 293.] All exhibits. [R. 294-513.]

Thereafter, the record in this case, including said Bill of Exceptions, and all exhibits separately and directly certified, was filed with the clerk of this Honorable Court. [R. 293.]

Statement of the Case.

The counts, with the exception of Count 11, of the indictment under which appellant Marshall and three of the other defendants on trial was convicted, and pursuant to which judgment was entered against the appellant, charged that this appellant and the defendants Helen May Fawkes, Llewellyn F. Marsh, Norman H. Marshall, Albert A. Martinez and Charles W. Talbott “. . . did devise and intend to devise a scheme and artifice to defraud . . .” from the persons named in the indictment and other persons unknown to the Grand Jury, and from members of the general public who answered newspaper advertisements by signing letters bearing their names and addresses, “. . . and to obtain money and property from said persons intended to be defrauded by means of false and fraudulent pretense, representations, statements and promises . . . which money and property defendants intended to convert to their own use and gain without *giving* or *intending* to give the persons intended to be defrauded *anything* of an equivalent value or *anything of value* in return for their money or property, which said scheme was . . . as follows.” [R. 2-4.] (Italics ours.)

Defendants would insert ads—(a) Business connection permanent; (b) Income reasonably \$6,500.00 yearly; (c) Cash deposit \$1,500.00 to \$3,750.00 required, which would be “secured and returnable.” [R. 4.]

Under name of Direct-U. Systems wrote persons responding to ads stating representative would call in person, not a promotional matter, nothing to sell applicant, defendants to select a person interested in “permanent connection which increases yearly”; *money obtained by defendants as deposit from franchise holders as advance rentals not to be returned but retained by defendants for their own use.* (Italics ours.) [R. 4-5.]

When franchise holder found it impossible to make large earnings promised by defendants, or any earnings at all, and demanded return of money which defendants had induced him to deposit with company to guarantee his success, defendant refused to return any portion thereof,—but offered in lieu thereof worthless documents known as “re-purchase agreement” wherein they agreed to pay franchise holder percentage of any monies received by company from others in same territory whom defendants might induce to take a franchise. [R. 5.]

That, *thereafter*, (italics ours) defendants contacted persons intended to be defrauded and by oral statements, letters, etc., defendants represented and pretended [R. 5]:

(a) Direct-U-Systems corporation organized in California, company of good reputation, high integrity, unlimited credit standing and exclusive manufacturers of electrical directories for display in hotel lobbies [R. 5];

(b) Direct-U-Systems in position to give permanent, lucrative and non-competitive employment persons agreeing to become franchise holders and distributors of directories in given territories, and who would pay money as advance rentals on specified number of directories [R. 5-6];

(c) A franchise holder would be given exclusive right to install directories and rent space to business concerns thereon at certain stipulated rates, keeping all monies so derived with exception of agreed portion to company as royalties, and that original earnings, pyramiding as boards increased, would be earned [R. 6];

(d) That Direct-U-Systems, for annual rental fee for each directory furnished, would immediately supply franchise holder with as many of said devices needed for placement in hotels and install and maintain at all times, without cost to franchise holder [R. 6]; whereas, in truth and in fact, as defendants then and there well knew, Direct-U-Systems was not any of the things represented and defendants could not do any of the things represented. [R. 6.]

Success of franchise holder would be guaranteed and money deposited with company would be *secured and returnable* (italics ours)—whereas, in truth and in fact, this was not correct. [R. 6-7.]

Earnings of \$6,500.00, or more, per year were being made by franchise holders—whereas, in truth and in fact, no earnings being made by holders and none to be made by holders, but on contrary, such holders had suffered and would suffer loss, disappointment and damage through dealings with Direct-U-Systems, all known to defendants. [R. 7.]

Direct-U-Systems business, international in scope, had long record of successful operation and in position to render satisfactory and continuous service—whereas, in truth and in fact, as defendants then and there well knew, this was not true, but on contrary was poorly financed and

equipped, without adequate facilities to comply with its contracts to carry on successful business. [R. 7.]

That electrical directories then and there installed and in operation in lobbies of Hotel Multnomah in Portland, Oregon, and New Washington Hotel, Seattle, that they were satisfactory, successful and in good order—whereas, in truth and in fact and known to defendants, Direct-U-Systems directories never in hotels but that directories manufactured by defendants previously under name of National Directories Systems Company that failed and out of existence, had been in lobbies described for short periods in 1938 and 1939, said directories not satisfactory and successful and not kept in good order, but had been removed because proven a failure. [R. 7-8.]

Direct-U-System unique and first and only advertising medium of kind—whereas, in truth and in fact, as known to defendants, not so, but on contrary, familiar devices then and there on market and had been for many years, including directories which defendant theretofore marketed and unsuccessfully operated. [R. 8.]

Directories were in great demand by hotels and business men and space for installation of boards in hotel lobbies and subscription for advertising readily obtained—whereas, in truth and in fact, as defendants knew, not so. [R. 8-9.]

Direct-U-Systems directories protected by patents and patents pending, holders would not have any competition in distributing and selling advertising space—whereas, in

truth, as known to defendants, not so, but on contrary, compelled to compete with others in identical line of business and who were then operating at time franchises bought by those who intended to be defrauded—all known to defendants. [R. 8-9.]

Directories to be substantially constructed free from defects and mechanical errors and render steady dependable service—whereas, in truth and in fact, as well known to defendants, not so, but on contrary, subject to frequent interruptions due to imperfect construction. [R. 9-10.]

Directories to be shipped to franchise holders promptly—whereas, in truth, as known to defendants, not so, but shipments delayed for long and unreasonable periods. [R. 10.]

Direct-U-Systems would maintain and service directories shipped and installed and at all times keep them in good working order—whereas, in truth, and known to defendants, company could not and would not maintain service, and could not and would not at all times, or at any time, keep directories in good working order. [R. 10.]

Said representations, etc., made, or caused to be made by defendants to persons intended to be defrauded as a part of the scheme and artifice to said persons intended to be defrauded, as aforesaid. [R. 10.]

Said representations, etc., made by defendants through and by means of oral statements, writings, etc., so worded and expressed as to deceive, were then and there

intended to deceive persons intended to be defrauded and any person who might hear or receive them. [R. 11.]

Count 11 charges a conspiracy to commit the substantive acts referred to in the preceding counts, and alleges thirteen overt acts. [R. 52-56.]

The substantive Counts 1, 2, 3, 4, 5, 8, 9 and 10, allege the mailing of letters in furtherance of said scheme, which will be hereinafter separately discussed in connection with the analysis of the sufficiency of the evidence.

It will be noted at the outset that certain repugnancies appear in the indictment. For instance, the indictment charges on the one hand that the money obtained by the defendants from the persons intended to be defrauded as a deposit on advance rentals was not to be returned to the franchise holders but retained by the defendants for their own use [R. 5], and on the other hand charges "that the success of the franchise holder would be guaranteed and the money deposited by him with said company would be secured and returnable." [R. 7.]

The essence of the scheme, as charged in the indictment, seems to be that under the guise of a business proposition wherein the defendants represented themselves as manufacturers of directories for placement in hotel lobbies by franchise holders, that the real fact was, as alleged in the indictment, that the defendants, through this medium and in bad faith, made their proposition a vehicle to obtain money without giving anything of equivalent, or anything of value, to the franchise holders.

Questions Presented.

There is but one question presented on this record for consideration by this Honorable Court, *i. e.*, the sufficiency of the evidence. The question is subdivided into two separate considerations, viz.:

I. That the Court erred in refusing to grant the motion for directed verdict made by defendant at the close of the Government's case, to which an exception was taken. [R. 238.]

This point is before the Court of Appeal as Assignment of Error No. 1. [R. 73.]

II. That the Court erred in refusing to grant the defendant said motion for directed verdict of not guilty at the close of all the evidence to which an exception was taken. [R. 292.]

This point is covered by Assignment of Error No. 2. [R. 73.]

It will be our purpose to analyze the evidence separately as it applies to the points at issue. In approaching this analysis we believe certain consideration should be given to the following propositions:

(A) That under the indictment the scheme consisted of advertisements for residence managers which stated that the business connections would be permanent, that the income would be reasonably \$6500.00, and that the money sought to be obtained from persons intended to be defrauded consisted of cash deposits ranging from \$1500.00

to \$3750.00, which was obtained at the time the contracts were signed; that certain representations were made to persons answering the ad by mail, and thereafter by the company's representative in talks with the prospective alleged victims prior to the execution of contracts and the obtaining of the cash rental deposits. Included in the gist of the scheme is the allegation that when the persons who had entered into the contract found it impossible to make the large earnings promised to him, or any earnings at all, and demanded the return of his money which he had deposited, defendants refused to return such deposit, or any portion thereof, but would give in lieu a worthless "Re-purchase Agreement." [R. 4-5.] We take the position that the remaining allegations of the indictment commencing with "That thereafter," the defendants would contact the persons to be defrauded and by oral statements, etc., would represent and pretend, is, by the language of the indictment, surplusage. [R. 5.] We contend from the very wording of the indictment, certain representations alleged to have been made under such allegations were, in fact, made after the scheme had been conceived and after the letters, charged in the substantive counts of the indictment to have been mailed in furtherance of the object of the scheme, were received by the persons intended to be defrauded. This is to say, that it is our purpose to attempt to establish that the evidence shows that in each and every one of the counts involved there is a total absence of evidence tending to show any scheme to defraud on the part of the defendant, accompanied by the necessary specific intent at the time the substantive count letters were mailed by the Direct-U-Systems.

(B) That an examination of the count letters alleged to have been mailed in furtherance of the scheme show that, rather than being in furtherance of a scheme to defraud, on their face show a lack of any specific intent, and, moreover, show that they were mailed after the money was received by the company and therefore after the alleged purpose of the scheme was accomplished.

If our contentions are correct as to the substantive counts, then Count 11, which charges conspiracy to commit the substantive events, must fall, since it is dependent upon the existence of the scheme as alleged in Count 1.

Points of Law Involved.

In this connection, we wish to set forth certain principles of law which we respectfully submit will support the contentions above made.

1. A false representation does not amount to fraud unless there is specific fraudulent intent at the time the representation was made.

Yusen v. United States, 8 Fed. (2d) 6.

2. The fraudulent intent must exist at the time the mails are used.

Wallington v. United States, 233 Fed. 247.

3. Evidence is insufficient where it shows that the scheme did not exist prior to the date of mailing the letters.

Hass v. United States, 93 Fed. (2d) 427.

4. It is not an offense if the defendants honestly believe the representations to be true.

Rudd v. United States, 193 Fed. 914.

5. Although a scheme may be visionary, this does not of itself make it fraudulent if the promoter actually believed in it.

Sandals v. United States, 213 Fed. 569.

6. The question of the good faith of the defendant is the cardinal question involved.

Post v. United States, 135 Fed. 1.

7. The taint of fraud may be removed where it appears there was no personal profit and refunds were made.

Corliss v. United States, 7 Fed. (2d) 455.

8. It is not enough that there be evidence of a scheme to defraud, but it must also be shown that the mails were used as a part of the scheme charged, and that each letter relied on was not sent out until after the scheme of fraud had been borne.

United States v. Buckner, 108 Fed. (2d) 921;

Vann v. United States, 76 Fed. (2d) 808.

9. The use of the mails must be in furtherance of the scheme charged.

United States v. McKay (D. C., Mich., 1942), 45 Fed. Supp. 1001.

Facts in Evidence and Argument Thereon.

A. PROSECUTION'S CASE.

We believe it to be in the interest of clarity to take up a discussion of the counts in the order in which the intended victims appear in the record.

1. HAROLD E. WEEKS, alleged to be the victim and the subject of the alleged scheme to defraud. (Counts 5 and 8 of the Indictment.) [R. 28, 39.]

Mr. Weeks testified that he was a consulting engineer, that he answered an advertisement which stated, in substance, that they were seeking a residence manager, permanent connection, income reasonably \$10,000.00 yearly, \$3750.00 cash required secured and returnable. He testified that thereafter he received a communication (which is not one of the count letters) acknowledging his letter and stating that a representative would call upon him. He testified that thereafter Mr. Wallace, representing Direct-U-Systems called upon him. [R. 76-77.] He testified that he entered into an agreement with Mr. Wallace, acting for Direct-U-Systems, on the 27th day of July, 1939. This agreement was received as Government's Exhibit 4. [R. 78-80.] Attached to the exhibit is a schedule of anticipated income. [R. 81-83.] Mr. Weeks further identified, as part of his testimony, Government's Exhibit 5, which was his check for the sum of \$3750.00 dated August 1, 1939. [R. 84.]

It is respectfully submitted that the object of the scheme charged in the indictment was completed when the witness Weeks paid the money to Direct-U-Systems, which, as we stated, is August 1, 1939, and that the scheme, if there was one, was completed on that date.

Therefore, we respectfully submit that since Count 5 is a letter from Direct-U-Systems, with which defendant was connected, to Weeks dated May 1, 1940, that this letter was not in furtherance of any scheme to defraud since the alleged object of the scheme charged in the indictment was accomplished with the receipt of Week's money. [R. 28.] Furthermore, the tenor of the letter, which is the subject of Count 5, clearly shows that instead of it being a letter which would be the subject of any scheme to defraud, it is a letter which for the most part refers to Mr. Weeks' failure to cooperate.

The same reasoning applies to Count 8, which is a letter mailed by Direct-U-Systems on August 8, 1940, to Weeks. [R. 40.] An examination of this letter likewise reveals that it can in no way be considered as in furtherance of the scheme charged in the indictment, which was to obtain money and property from the intended victims, since, as we have shown, what money was obtained from Mr. Weeks was received on August 1, 1939. It appears to us, and we therefore urge, that Counts 5 and 8 must fall since the evidence positively shows that the letters, which constitute a necessary element to support the offenses charged, were not mailed until after the scheme charged in the indictment was accomplished.

Apart from the argument just made, it positively appears from Mr. Weeks' testimony that the company did everything that they said they would do in their contract. This is apparent in the cross-examination of Mr. Weeks wherein he identified Defendant's Exhibit A, "Verification of Assistance Given to Franchise Owner." [R. 113-114.] It appears from this verification, which was signed by Mr. Weeks, that through Mr. Wallace, representing

the company, that assistance was given intermittently from August 1st to August 14, 1940, and that he trained the sales forces every day from August 14th. Mr. Weeks stated that he had received all the assistance the company had agreed to furnish him, and all supplies the company had agreed to give him in the campaign. Mr. Weeks testified that he had a great deal of trouble with the first machine and identified various letters received by him from the company, and, in turn, letters from him to the company, most of these letters written subsequent to Mr. Weeks having parted with his money. We believe it pertinent to point out in Mr. Weeks' letter of July 31, 1939, that portion in which he advises the company Mr. Wallace had been very cooperative. [R. 85.] He testified that Mr. Wallace remained in New York about four weeks after signing the contract; that he (Wallace) selected salesmen for him which he approved. [R. 84.]

As indicating total lack of criminal intent, there is a letter to Mr. Weeks, which is Government's Exhibit 15, and which is in reply to a letter from Weeks referring to the trouble he was having with the machine, in which letter the company stated, in substance, that they were sorry he had made the installation in the hotel when he felt the equipment would give him trouble. It stated that they had overcome similar difficulties in the past through adjustment and would appreciate Weeks having it taken care of there and the company would take care of the cost, if it was not too much, while the company was preparing another rotary in accordance with Weeks' suggestion. [R. 96-97.]

On cross-examination Weeks testified it was the first machine that gave him the most trouble. He stated at

the time he ordered it it was for a rush exhibition and he was advised by the company that a rush order would mean rush construction. Weeks testified that he was not told that the company's product was the only one on the market but that it was the best, and stated that they were beautiful cabinets. [R. 114-115.]

Weeks testified that the most serious fault was the animator, which was the mechanical feature, and that was his chief complaint, but he testified these animators were improved on later installations. [R. 116.]

Weeks testified that the company sent him a new machine to replace the first one with which he had so much trouble. [R. 102.]

Weeks further testified that he did receive all the machines for which he had paid cash deposits. [R. 103.]

It is true that Weeks testified that he did not make any money, but we respectfully submit that the actions of the company's representative in remaining with Weeks for four weeks, interviewing, selecting and training the salesmen, the authorization of the company for Weeks to incur the expense for repairs on the original machine, which was a rush job, the replacement of that machine later at no cost to Weeks, all positively show an absence of any scheme to defraud, and on the other hand, an honest effort to fully comply with the terms of the contract.

We therefore submit, for the reasons above stated, that it was error for the Court to refuse defendant's motion for directed verdict as to Counts 5 and 8, both at the end of the Government's case and at the conclusion of all the evidence, for the reasons: (1) that there was no evi-

dence to support the scheme charged in the indictment; (2) That the letters which are the basis of substantive Counts 5 and 8 were not in furtherance of any scheme; and (3) the actions of the defendant and his company clearly negative any criminal intent at the time Mr. Weeks was solicited to sign the contract, which he subsequently executed.

2. CHARLES S. WALLACE. [Direct, R. 117-131; Cross, R. 131-132.] Witness Wallace identified himself as a salesman retained by Mr. Marshall in 1939. He stated that he sold cabinets to Mr. Weeks (Counts 5 and 8), but never made any representation not contained in the company's literature or in the kit. [R. 117.]

Witness Wallace identified a letter dated July 22, 1938, which is addressed to Mr. King. He stated that it was in the kit Mr. Marshall had given him. The witness stated he showed Mr. Weeks letters from managers of Hotel Multnomah and the New Washington Hotel. [R. 117-118.] The letters appear as Exhibits 58, 59. [R. 192-193.] There is absolutely no evidence in the record that the statements made by these hotel managers were untrue.

Exhibit 25 was introduced, which was identified as containing instructions given to the salesmen. [R. 118-125.] Portions of these instructions to salesmen we respectfully submit again show there was no criminal intent to defraud, as alleged in the indictment. For instance, at R. 121, is the following statement, "As I told you, we are not interested in securing the services of a high pressure promoter type of a man, but we are interested in securing the services of a man with good common sense and business experience that will be willing to devote his time to

supervisory work, collecting the money, etc.; that is interested in a permanent connection." . . . "Our experience has shown that it is necessary to have some local men to handle the supervising and checking to see that the advertisers sold are really good reputable men or concerns that would be really representative of their respective lines." . . . "we have nothing to sell you, which is true, for we do not sell any of our equipment, but we make all of our installations on lease basis. We lease the system for the first year for \$750.00. Now the way the company figures, this lease rental just about pays for the building of the system, its maintenance, upkeep, etc., and then the company gets a 20 per cent royalty, or \$720.00, which is practically all profit, and it is from this that I receive my compensation, etc." In reading these directions over, while there are certain inaccuracies, such as the fact that the salesman was to receive his commission out of the 20 per cent royalty, it does not seem to be a material misrepresentation. The significant deduction to be gleaned from an over-all perusal of the instructions indicates again that the company was anxious to get a good business man and that there is no evidence to disprove the representations that the company's profit, if any, was to come from royalties, that the cash advance rentals went to the building and installation of the cabinets, operating overhead and commission to the salesmen. With respect to the latter, it appears that the witness Wallace received 30 per cent of the cash rentals obtained. [R. 125.]

The witness testified that at the time he received the letter of instructions he did not believe it to be misleading, but in response to the inquiry by the Court, he stated that now that the Court pointed it out to him, he did. [R. 125.]

The witness Wallace testified that he saw the installations and cabinets sent to Mr. Weeks in New York. [R. 125-126.]

He also identified excerpts from certain letters from Direct-U-Systems to the witness as contained in Government's Exhibit 27. The excerpts appear at R. 126-131. Certain of these excerpts, we respectfully submit, do not intend to prove or disprove any material allegations in the indictment.

On cross-examination the witness Wallace testified that he never made any representation that to his knowledge was false, and that he himself knew, when he first went out for the National Directories System (a company with which Marshall and Talbott were associated up to 1938) that they were new in the field. [R. 131.]

Witness Wallace testified he assumed that Mr. Weeks (Counts 5 and 8) was always dissatisfied and that he did know Mr. Weeks was not fully cooperative. He testified he knew some of the installations Mr. Weeks had were working. [R. 131-132.]

3. RALPH H. BERGEN. (Count 10.) [R. 49.] Witness Bergen is one of the alleged victims and is the subject of Count 10 of the indictment. The Bill of Exceptions appears to be silent as to the exact date the agreement was entered into with Mr. Bergen, but from an examination of Count 10 of the indictment, which is a letter from Direct-U-Systems to Bergen, we note the agreement was entered into on November 6, 1940, and apparently the money was received on that same date since the count letter, dated November 9, 1940, acknowledges receipt of the sum of \$2,250.00. [R. 49.]

We respectively submit that an examination of this letter (Count 10), on its face, proves it was not written in furtherance of the scheme alleged in the indictment, for, as we have previously pointed out, the scheme charges that it intends to obtain money and property and pursuant thereof, they used the mails. Whereas, the letter itself shows that before the recourse to the mails, which is necessary for the existence of the offense, all the money obtained from Mr. Bergen had already been received. For this reason alone we therefore respectfully submit that there is no evidence to sustain Count 10 of the indictment and a motion for directed verdict at the close of the case should have been granted.

Apart from that, however, the witness testified to representations made to him by Mr. Bryant, an agent in the company. Included in these representations are the following: San Francisco was virgin territory and that there had not been any machines there before. [R. 133.] He states that after he signed the contract he came to Los Angeles and met Talbott and Marshall and stated he had a conference with them and nothing was said contrary to what Bryant had told him. There is no positive evidence that the witness told Marshall and Talbott of these representations made by Mr. Bryant. In fact, there is no evidence that appellant Marshall knew that Bryant made any representation whatsoever. [R. 133.]

The witness Bergen testified that at the time he was interviewed by Mr. Bryant and prior to his signing the contract their conversation took place in the Sir Francis Drake in San Francisco where there was a machine on exhibition. [R. 132-133.]

The witness testified that the machine which he saw in the Sir Francis Drake was turned over to him; that the machine had been used as a sample. He stated that he sold three spaces at \$10.00 per month each, that there was not much difficulty with the electrical directory but that the card display did not work satisfactorily at all.

The witness then identified several letters which he had written and which he, in turn, received from the company with which the defendant was connected. [R. 135-140.] An examination of this correspondence shows that these letters were written after the alleged scheme charged in the indictment was accomplished and do not tend to prove or disprove any of the allegations.

The witness testified that he was offered a re-purchase agreement [R. 140], but testified that he did not sign it. [R. 142.]

On cross-examination witness identified Exhibits FF and GG, which were two additional contracts entered into subsequent to the first one and which purportedly enlarged the territory. [R. 154, 159.] The witness admitted he signed a statement that Direct-U-Systems had done everything it had agreed to. [R. 162.] The witness also identified Defendant's Exhibit JJ, which is a letter written by defendant December 24, 1940, wherein he stated that the consumer reception was all that could be expected and that he had a nice back-log of business that would crack soon. [R. 165.] Contrasting this, we have a letter, Government's Exhibit 9, which was written by Bergen wherein he stated he had been ill a great deal of the time since Christmas and seeking to withdraw. [R. 147-148.]

After the introduction of Defendant's Exhibit EE, which is the agreement entered into on November 6, 1940

[R. 148-151], there again appears an anticipated income and expense diagram. [R. 151-153.] Since this anticipated income and expense diagram appears throughout the record and is attached to every agreement, we think it well to here point out that there is no evidence to show that any of the estimates therein given were false.

4. H. R. BROWNE [not a victim but mentioned in overt act 10, Count 11, R. 55]. Mr. Browne testified that he was a resident of Oakland, California, and there met the defendant Martinez in July of 1938. He testified that Martinez estimated that if Browne had ten advertising boards he ought to clear \$7,000.00 in the territory around San Francisco. He stated that he gave the company \$1500.00, *all of which was returned to him in 1939.* (Italics ours.)

Browne further testified that the cabinet he received for the Plaza Hotel in San Francisco was top-heavy and contained other mechanical imperfections, and that he did not try to obtain any other cabinets thereafter. [R. 176.]

Although this testimony of Browne's does not substantiate the overt act 10, Count 11, I assume that his testimony was introduced as tending to show fraudulent intent. However, we respectfully submit that the testimony of Mr. Browne to the effect that he received all of his money back, indicates a total absence of criminal intent existed in the mind of the defendant at the time these agreements were executed. It further shows the good faith of the defendant and his associates, and the record shows that they provided the machines as contracted for, trained salesmen, obtained leases, prepared advertising cards and sent other stimulating material to their franchise holders. [R. 176.]

5. E. M. SCHUTT. [Count 4, R. 25.] Mr. Schutt testified that he resided in Cleveland, Ohio, and after responding to an ad was contacted by Mr. Morgan representing the company. He testified that Morgan told him that patents were pending and that he gave Morgan a certified check for \$1500.00. Mr. Schutt further testified he learned there was another such company, the Robot Mat Company, but that Morgan told him it was out of business. He stated that he went around with Morgan endeavoring to get leases in the various hotels but that they couldn't get any. He stated that Morgan finally got one at the New Amsterdam Hotel but he told Morgan it would not be of much value because it was a residential hotel. He stated Morgan obtained other leases but they were not of much value. Prior to the time he gave Morgan the \$1500.00 he testified that the latter had said the company was thoroughly reliable, could meet all obligations and had been doing business for a long time. The witness testified that he relied on these representations. He testified that he did not sell any advertisements, but he stated, "*I tried for only one week.*" (Italics ours.) [R. 177.]

Witness identified an agreement entered into with Morgan and was marked as Government's Exhibit 44. Only one paragraph appears in the Bill of Exceptions and he identified the exhibit in full with the rest of the exhibits. The only paragraph of the agreement appearing in the Bill of Exceptions recites:

"Lessor shall cooperate and assist lessee in securing five location leases; hire and train salesmen and render all additional assistance practicable." [R. 177.]

From what appears in the record, and from the witness' own testimony just above referred to, Mr. Morgan did everything that the quoted part of Government's Exhibit 44 called for.

The count letter naming Mr. Schutt as the victim is a letter from the Direct-U-Systems to Schutt dated February 8, 1940. [R. 25-28.] We respectfully submit an examination of this letter shows from the first paragraph that it was sent after the objective of the scheme, as alleged in the indictment, was accomplished, *i. e.*, that money had been obtain from Mr. Schutt. That is to say, that the count letter in question is in no way in furtherance of the scheme charged in the indictment. In fact, the whole letter is taken up with answering the difficulties Mr. Schutt stated he was having in getting started and winds up with the strong recommendation that he forget about the other competitors and go ahead with his own business. [R. 28.]

We respectfully submit, for the reasons above stated, the Court erred in not granting the motion for directed verdict made by defendant at the close of the Government's case, and again at the conclusion of the evidence, since it affirmatively appears that the object of the scheme, as alleged in the indictment, if one there be, was accomplished when the money was obtained from Mr. Schutt, and the count letter in question was written subsequent thereto and could not possibly be construed as being in furtherance of a scheme as alleged in the indictment.

We should point out to this Honorable Court, that there was identified and introduced into evidence considerable correspondence of a similar nature passing between Mr. Schutt and the company. [R. 177-184.] Since it is our

belief that it does not tend to prove or disprove any of the issues in the indictment, we are not disposed to take up a discussion of them at this time.

We believe the pertinent course of Mr. Schutt's dissatisfaction and failure is found in his direct testimony, "I did not sell any advertisements but I tried for only a week." [R. 177.]

The witness further testified that subsequent to his demands for the return of his money he went to California, visited the company's office where he met Mr. Talbott and stated that Talbott introduced him to a Mr. Painter, whom he now recognizes to be Mr. Marshall. Assuming, for the purposes of this argument (although it is later denied and explained in Talbott's testimony) that this is true, this in no way tends to prove or disprove any of the material allegations of this indictment. [R. 184.] It is obvious this conversation occurred long after the scheme was accomplished. The witness testified in this conversation that Talbott stated that apparently Mr. Marshall (this must be a typographical error as the witness had previously stated he dealt with Mr. Morgan. [R. 177.]) had misrepresented things to Schutt and that Talbott promised to get him his money back when the Board met, but that he did not receive it. [R. 184-185.]

6. RALPH A. BURKE. [Count 1, R. 12; Count 2(a), R. 15-18; Count 2(b), R. 18-21.] Consideration of the testimony involving the alleged victim Burke, should be divided into a separate consideration of Counts 1 and 2, for Count 1 is a letter of March 29, 1939, acknowledging Mr. Burke's response to their ad. [R. 12-13.] Whereas, Count 2 consists of two letters, one of April 25, 1939, to

Burke from defendant Martinez, and one of April 26, 1939, from Burke to Talbott.

The letter in Count 1 is obviously written before money received; whereas, the letters in Count 2 fall within the same category previously discussed. That is to say, in Count 2, it cannot be contended it was in furtherance of the alleged scheme of fraud since it appears, on the faces of the respective letters in Count 2, that they were mailed after the alleged fraudulent objective was accomplished.

Mr. Burke testified that he resided in Oakland and that he was called on by defendant Martinez. He stated that he inquired of Martinez what protection he would have; that Martinez advised him there was nothing on the market like it, that it was completely patented, that it was brand new and had never been tried in San Francisco. [R. 186.]

Mr. Burke further testified that Martinez, after some figuring, thought he could make at least \$6500.00 a year; that they were a very big concern; that they bought everything for cash and had no reason to have a rating with Dunn & Bradstreet. Martinez further told Burke, so the latter testified, that he, Martinez, received no commission on the money put up, that it was held in trust and if the franchise holder fell down on the job the money would be returned to him; that on the strength of these representations Burke paid the sum of \$1500.00. [R. 186.] It is obvious that certain of these representations were false, since we have seen that the alleged victims Bergen and Browne operated in San Francisco and the record shows that the machines were not completely patented. However, we respectfully submit that there is no evidence to show that Martinez was authorized to make any of these statements by the defendant Marshall, nor that the

defendant Marshall had any knowledge of these representations. By stretching a point, it might be contended that Martinez' statement *re* the fact that he did not receive any commission on the money put up was an exaggeration of that portion of the sales advice to salesmen, Government's Exhibit 25 found at R. 120, ". . . but it does assist you in selection of the best applicant, as not only the company, but you yourself, are entirely dependent upon the selection of the right man . . ."; and again in the same document at R. 124, "It is my job to select the best man here that it is possible for me to find, as my future income as well as the company's is based entirely upon your success. . . ." [R. 124.]

However, as positive evidence that Martinez, if he made the representations, which we must assume for the purpose of this argument, he did so without authority, there is found an excerpt from Government's Exhibit 53, which is a letter to Burke from Talbott dated April 26, 1939, and which is the subject of Count 2(b) of the indictment, as follows: "There has never been any attempt to state that the directory system is patented in all details. . . ." [R. 187.]

The witness further testified that he did not receive a cabinet but that he did not ask for any. [R. 186.]

He further testified that he did not try to do any selling himself, that he had salesmen in the field who brought in six contracts; that when he learned the article was not patented and that people had been trying to sell it there previously, he asked for his money back and he did get \$500.00 back and the company executed a re-purchase agreement with him. [R. 188-189.]

The witness further testified that he wrote a letter wherein he stated he thought the franchise could be ad-

vertised for sale on the basis of \$7500.00, out of which he could get his money. [R. 188.]

From the testimony it is obvious that Count 1 of the indictment must fall because it affirmatively appears that the victim was not deceived, as alleged in the indictment. [R. 10.] The worst that can be said of the letter of March 29, 1939, which represents Count 1 of the indictment, is that it is an exaggeration and contains some "puffing" matter. There is nothing in the testimony of Mr. Burke, or anywhere else, so far as we have been able to find, which would justify a legal conclusion that the statements made in said letter were knowingly, wilfully and fraudulently made. We refer to the following statements: "Ours is a highly ethical and legitimate business proposition, dealing only with the larger business organizations, banks, etc. We are dependent on selecting a person of good general business experience who is interested in a permanent connection with an assured income which increases yearly. We must virtually guarantee the success of the one we select." [R. 12-13.]

The evidence of Mr. Burke obviously negatives the material allegations of the indictment as an essential ingredient of the scheme charged, wherein it is alleged, "that when a franchise holder found it impossible to make the large earnings promised to him by said defendants, or any earnings at all, and would demand the return of his money . . . said defendants under the name of Direct-U-Service would refuse to return such deposit of money, *or any portion thereof.*" (Italics ours.) [R. 5.] We urge this proposition because of Mr. Burke's testimony that he did not ask for any cabinet and did not receive any [R. 186] so that obviously he is not in the category just referred to in the indictment as one finding

it impossible to make the large earnings promised to him [R. 5]; nor is he one in the category, as charged in the indictment, to whom the defendants would refuse to return his deposit, "*or any portion thereof*" (italics ours) [R. 5] since it appears that he received \$500.00. As a further element, it appears that Mr. Burke signed the regular agreement with the company and the same appears as Exhibit 52. [R. 346-349.]

We therefore submit that the Court erred in denying defendant's motion for directed verdict at the close of the Government's case, and again when it was renewed at the conclusion of the evidence, and that Count 1 should be reversed for insufficiency of the evidence to sustain material allegations of the scheme charged in the indictment.

Count 2—The arguments just made with reference to Count 1 are applicable to Count 2. With this, the further fact that the letters in Count 2 were written on April 25th and 26, 1939, which is subsequent to the date of the execution of the contract. [R. 346-349.] [Count letter 2(a); R. 15-18; Count letter 2(b), R. 18-21.]

A further examination of these letters indicates that they could not possibly be construed as being in furtherance of a scheme to defraud as alleged in the indictment. For these reasons, and the reasons urged in the attack on Count 1, we respectfully submit that the Court erred in not granting defendant's motion for directed verdict at the close of the Government's case, and again when it was renewed at the conclusion of the evidence, and that Count 2 should be reversed.

7. T. E. MORGAN (who is not a victim). [R. 189.] Mr. Morgan testified that he was employed as an agent, in answer to an ad relative to Direct-U-Systems. He testified that in response to his inquiry Mr. Marshall told him the essential features had been patented but in the general features they had patents pending. He said he did represent to Schutt that it had not been tried before and he stated he did procure for Schutt five hotel locations.

This is the only positive evidence we have observed in the evidence that the defendant Marshall ever stated to anyone that the essential features of the machine were patented. However, having in mind that T. E. Morgan was an agent and a Government witness, the Court may consider as to whether or not his testimony was secured as the alternative of becoming a defendant. Further, as we have seen earlier in this brief, the company, through Mr. Talbott, has repeatedly stated that they never made any claims that the machine was patented but that they had several exclusive features. We believe the latter statements should more than outweigh the isolated testimony of Mr. Morgan since the letters referred to, as we have seen, were written to franchise holders shortly after inquiry. We refer specifically at this time to Count 2(b) [R. 19] wherein the company states in part, "It is impossible to cover all of the Directory features in patents as there is nothing basically patentable on this type of equipment with the exception of design patents, but the revolving equipment that we have is patentable." [R. 19.]

8. A. M. GONZALES and IVAN SMITH (not victims). We are going to brief the testimony of these witnesses in short. They testified as to knowing Martinez in 1936 and in 1937 and 1938. Their testimony does not tend to

prove or disprove any of the issues in this case. [R. 190-191.] They apparently seek to contradict Government's Exhibits 58 and 59, letters from the Multnomah Hotel in Portland and the New Washington Hotel in Seattle, but we respectfully submit that they do not successfully accomplish their intended purpose.

9. L. C. WHITNEY (not an alleged victim in any of the substantive counts). [R. 191.] The witness testified that he was a banker and that he had negotiations with Mr. Marshall in February, 1939, and that after several conversations with Mr. Marshall entered into a contract with the company for which he paid \$1500.00. [R. 191, 194.] He stated that Marshall told him that they were attempting to put these machines in San Francisco for the first time and that there would be no competition. [R. 194.] This representation, if made, is obviously untrue, but we respectfully submit that it is not material. It is not to be expected that a man, believing he had a legitimate product, would advise a new sales outlet that a previous man had fallen down in that territory. The witness stated that he did not get a cabinet but that he never tried to get one. [R. 194.]

The witness Whitney further testified that he received the return of \$375.00 of his money and a re-purchase agreement, which he agreed to accept. [R. 196.]

10. MYRTLE SCHUTT (wife of alleged victim in Count 4). This witness testified that she was present when her husband talked to Marshall and Talbott in Los Angeles, corroborating her husband in testifying that Talbott had introduced Marshall as Mr. Painter. She testified that her husband stated to them that he was dissatisfied with the representations made to him in Cleveland.

We respectfully submit that this does not tend to prove or disprove any of the issues in this case as it is consistent, even though not ethical, for a person engaged in a legitimate business and in hard times to seek to avoid persistent creditors. [R. 196.]

11. CECIL I. McREYNOLDS. [Count 3, R. 22-24.] The witness testified that in October 1939 he was in Washington, D. C. and saw a Direct-U-Systems ad and had a conference with a Mr. MacNeil, that MacNeil told him the company was an old company of high financial standing and that the men representing it were well and favorably known on the West Coast. He stated he was told that the machine was protected by patents and patents pending. He stated there was some discussion of a competing company but that there would be no trouble with it as it was so much inferior to Direct-U-Systems. He testified he signed an agreement October 6, 1939, and gave Mr. MacNeil \$1500.00. [R. 197, Government's Exhibit 72.]

The letter, which is the basis of substantive Count 3 of the indictment was written November 9, 1939, to Mr. McReynolds and signed by Talbott. As heretofore urged, we respectfully submit that this letter could not be in furtherance of any scheme to defraud because it was written and mailed after the alleged object of the scheme was accomplished, *i. e.* obtaining of money from the intended victims, since it appears from Mr. McReynold's testimony that he paid his money on October 9, 1939. [R. 197.]

Apart from this, the witness testified he demanded the return of his money but never received it. However, he testified that he did not order an electric board for installation. He further testified that it was true that the or-

ganization (the company) did attempt to secure leases from hotels, that it assisted in securing three salesmen and assisted at meetings in training and forming sales organizations; that it assisted in compiling adequate lists of prospects and that it was true he, Mr. McReynolds, wrote, "to express my deep appreciation of the very fine assistance given me by Mr. MacNeil, a man of high attainments, exceptional personality and loyalty and trustworthiness . . .", and had signed the statement that he received all the assistance he was supposed to receive. [R. 208.]

On cross-examination the witness testified he was an attorney admitted to practice in the states of California, Arizona and New York, that his work was mostly civil and corporation work, that he had been in active practice since 1901.

There is considerable additional correspondence contained in the exhibits, and we wish to refer to portions of Government's Exhibit 73. This is a letter dated December 8, 1939, from McReynolds to Talbott. It reads in part, "When I first met Mr. MacNeill here in Washington he told me that he did not know whether or not he had anything to offer me, and would take a day or two to look into the situation here. A day or two later he informed me that apparently the Robot-Map people had signed up but the one hotel—the Raleigh—and while they might be at work, it would seem that we had a good expectation of getting into this market with the electric Directory of the Direct-U-Systems." [R. 382.] From the same exhibit, ". . . I did not get any actual contact with the Robot-Map people until we started on the Willard (hotel) and after we had started . . . two of the Robot-Map salesmen came to my office to talk to me and

get some information . . . we went over the situation, with nothing to conceal, and they admitted frankly that on the basis of \$60.00 a year we had much more to offer than they had, even at the same price; in fact, they hinted that they wanted a job with me. . . ." [R. 388.]

In this same exhibit this experienced attorney then made a proposal for a modification of the agreement. [R. 391-395.]

Further on in the same exhibit the witness stated that he wrote, "*It is all right for you and me to believe implicitly that the electric Directory of Direct-U-Systems is superior to anything else. . . .*" [R. 395.] (Italics ours.)

From the foregoing, we respectfully submit that the Court erred in not granting the motion of defendant for directed verdict at the close of the Government's case, and again when it was renewed at the conclusion of the evidence, for the reason that it is apparent there is no substantial evidence to support the allegations of the indictment, but, on the contrary, it appears from the excerpt of Exhibit 73, just quoted, in a letter written over a month after the witness signed the contract, had thoroughly investigated and experimented with the proposition, that an experienced attorney with thirty-eight years experience in civil and corporation law, implicitly believed that Direct-U-Systems was superior to any other product. [R. 395.]

We respectfully submit that this statement of Mr. McReynolds is an endorsement of the entire good faith of the defendant Marshall, that it demonstrates the failures and dissatisfaction of the franchise holders were not due to the defendant but were due to causes outside of his

control, as, for example, ill health on the part of Bergen, half-hearted efforts on the part of Schutt (as we have seen he only tried to sell advertising for one week) and endeavors to obtain the return of their money by others before they had ordered a machine which they were entitled to receive. It is apparent throughout this record that the defendant and his associates worked hard; that they delivered the machines when ordered; that in the case of Weeks the first machine was a rush job and they replaced it without cost, that the others worked and, as he testified and to which we have heretofore referred, the later machines were much more satisfactory; that the agents carried out the provisions of the agreement calling for assisting the franchise holders in obtaining hotels, assisting in the selection and training of salesmen and setting up of sales organizations; and, as we have seen and it affirmatively appears intermittently throughout the record, franchise holders signed acknowledgments that they had received everything the company had agreed to give them.

12. IRA H. ARNOLD (Patent Office witness). Mr. Arnold testified that he found no patent issued under anyone named Norman H. Marshall or to the defendants Marshall, Talbott, Martinez, Kane or Young or Marsh; nor did he find any assignment of National Directory Systems nor for the Automatic Map Company. He testified to an application for a patent by one Emmet W. McKenna on September 6, 1935, which was rejected the same year. [R. 211-212.]

13. ARTHUR K. BARNES. [Count 9, R. 44.] Mr. Barnes testified that in October, 1940, he was living in Pasadena and during the year met the defendant Marshall

with other defendants. He testified to a conversation with Marshall and asked if he could investigate the San Francisco situation by talking to the men who had sold space in the Sir Francis Drake Hotel and Marshall told him that that had been done by him, Marshall. He stated he requested a sworn list of the various hotels and locations where boards were in operation, which was furnished to him. [Exhibit 74 dated October 23, 1940; R. 213-216.] The witness testified that he gave the company a check for \$1500.00 to cover the franchise for the territory agreed upon, that he received salesman kits and advertising matter. However, the witness testified that he took "some little time to investigate this proposition and three weeks elapsed during my investigation and I submitted the proposed contract to an attorney." [R. 217.]

The witness further testified he had had advertising agency experience in the East. In addition, that he obtained a Dunn & Bradstreet report through the bank, concerning which report he made no complaint to anyone although he states, "I was not satisfied with my report but I did get a report that was satisfactory to me. At least I was satisfied to the extent I was willing to take a chance." He testified that defendant Marsh agreed to help him get started, which he did. He testified that he didn't attempt to verify or check a sworn statement given him concerning hotels where cabinets had been installed. [R. 218.]

The agreement entered into between the company and Barnes was on the 22nd day of October, 1940, on which day he paid \$1500.00. The letter in Count 9 is dated November 6, 1940, and was subsequent to the date the objective of the scheme, as alleged in the indictment, was accomplished. We therefore respectfully submit that this

letter is in no way, nor can it be considered in furtherance of the scheme charged in the indictment. Apart from that, an examination of the letter certainly shows that it cannot be in any way in furtherance of any scheme to defraud as it includes such statements that the company wishes to take this opportunity to assure Barnes that the success of his territory is of prime interest to them, as it is only through his success they can profit. [R. 45.] And again, the letter recites, "You and each of our lessees are the proprietors of an independent business . . . and you will profit exactly in the same proportion. . . . We are confident that Mr. Marsh explained each portion of our agreement with you, but if there is any point or provision that is not thoroughly understood by you, please do not hesitate to write us immediately, so that we may clarify it." [R. 46-47.]

Since the record is silent on this point, we may assume that from Mr. Barnes' investigation and the Dunn & Bradstreet report he received and from the advice given him by his attorney, he was satisfied with the enterprise outlined to him and that there was nothing in the contract which he did not understand. Moreover, as he testified, Mr. Marsh helped him get started as he agreed to do. [R. 218.]

It is true the witness testified that he asked for a return of his money from Mr. Talbott, which he did not receive, but was tendered a re-purchase agreement. [R. 217.] From the record the witness apparently did not carry out the provisions of the contract calling upon the lessee to furnish necessary information and requesting him to advise when he wanted the cabinets delivered. From the reading of that agreement, it is apparent there is nothing in the agreement which states that the money

will be returned, but, on the contrary, it is accepted as advance rentals.

Therefore we respectfully submit that defendant's motion for directed verdict at the close of the Government's case which was again renewed at the conclusion of the evidence should have been granted for the following reasons: 1. That the letter charged to have been mailed in furtherance of the scheme was mailed after the scheme alleged had been accomplished and therefore could not be in furtherance thereof, and 2. the evidence is insufficient to show that money was obtained under the circumstances charged in the indictment.

14. N. N. EDWARDS (Government Agent). Mr. Edwards, Postal Inspector, testified to conversations with various defendants in connection with this investigation. An excerpt from his testimony includes that Mr. Talbott told him that "There is no profit to us on advance rentals. We must have the advertising royalties to make any money on these deals." [R. 222.]

He testified that in a conversation with Mr. Marshall he asked how much money was invested in the business and he said that possibly \$25,000 would take care of it. He further testified that Marshall told him instead of receiving a salary he received a commission of 5% from everything from franchise holders, including rentals that might be due.

He testified he inquired of Marshall concerning the patents and Marshall stated an effort was made to patent the board but it had not been granted. Marshall stated the rotator was patented about a year prior and was patented through an attorney whose name he thought was Coleman. [R. 230-231.]

These are the significant portions of Edwards' testimony which we desire to call the Court's attention to in support of our contention of insufficiency of the evidence.

We have looked diligently through the record and we cannot find where there is any contradiction of the statements attributed to Mr. Talbott or Marshall by the witness. Mr. Marshall's statement concerning the patents, while at first, seem to be in conflict with the patent official's testimony, on closer examination is not inconsistent. We may assume that if the Government could have disproved that \$25,000.00 was invested in the company, if it could have disproved that Mr. Marshall received more than 5% of monies received from franchise holders, they would have done so. Thus, we find from the record no evidence to support the allegations of the indictment that it was the intention of the defendant Marshall to obtain money from the persons intended to be defrauded and convert it to their (his) own use; nor is there sufficient evidence to support the allegation that they had obtained this money without giving anything of value, nor anything of an equivalent value.

Count 11, Conspiracy—As we heretofore stated, Count 11 alleges conspiracy to commit the substantive offenses charged in the indictment. [R. 52-56.] We concede that there is evidence to support one or more of the overt acts charged in the conspiracy, leaving, therefore, the sole proposition as to whether or not there was a scheme, and if so, a conspiracy to commit the scheme charged.

We rest our presentation on this count on the arguments directed to the substantive counts because if there is insufficient evidence to support the allegations of the indictment that the defendants devised the scheme charged,

then this conspiracy count must collapse since it is dependent upon the existence of the scheme alleged in Count 1.

The Government rested at the conclusion of Mr. Edwards' testimony. [R. 238.] Whereupon, defendant, through his counsel, made a motion for dismissal and for directed verdict, which was denied and exception made. [R. 238.]

B. Defense. The defendant's case, which we do not propose to go into in this opening brief, consisted of the testimony of himself [R. 261-290] and this testimony included the introduction of Defendant's Exhibit 3X, which is described as a sales manual. [R. 264-287.] This exhibit is worthy of the Court's attention because it negates allegations of the indictment that this was a scheme whereby defendant sought to obtain money under representations knowing the same to be false. A casual reading of the exhibit shows that it is a careful thought out sales brochure composed for the franchise holders and their salesmen, which were sent to all franchise holders. [R. 263.] The composition and mailing of a document of this character, we respectfully submit, indicates the sincere belief of the defendant Marshall in the soundness of the proposition they were selling. The defendant Marshall's testimony, other than for the exhibit, is taken up, for the most part, with denials. It is true that we find therein admissions that he signed Talbott's name to a large amount of the literature that went out, but that this was done with Talbott's permission. We respectfully submit this in itself does not tend to prove or disprove any of the material issues of the indictment.

Conclusion.

Summarizing, we respectfully urge that the Honorable Trial Court erred in not granting defendant's motion for directed verdict on Counts 1, 2, 3, 4, 5, 8, 9, 10 and 11 at the conclusion of the Government's case, to which an exception was noted. [R. 238.] And again for failing to grant the same motion when it was renewed at the close of all the evidence [R. 292], for the following reasons:

1. The evidence was insufficient to support the scheme charged in the indictment for there is no substantial evidence to establish the gist of the scheme charged in the indictment, *i. e.* that the defendants knowingly, wilfully and unlawfully devised and intended to devise a scheme to deprive persons alleged to be defrauded of money and property without them intending to give them anything of value, or anything of equivalent value.

2. That there is no substantial evidence to show that any of the fraudulent representations charged were knowingly made prior to the obtaining of the money from the persons named in the indictment, at least that could be chargeable to appellant.

3. That there is no substantial evidence to show that the defendants converted the money obtained for their own use; but, on the contrary, the record affirmatively shows that the defendants carried out the terms of their agreement, and that in all cases cabinets were furnished where they were requested under the terms of the contract by the lessees.

4. The evidence affirmatively shows the good faith of the defendants. Particularly, reference is again called to the testimony of the witness Weeks, where the first cabinet was replaced without any cost to him and it ap-

peared from his testimony that the machines subsequently delivered operated more satisfactorily than the first one.

5. The testimony affirmatively shows that defendants obtained, trained and instructed salesmen for the franchise holders, assisted them in obtaining leases on hotels. All of which testimony completely negatives the scheme charged in the indictment that the sole object of the defendants was to obtain the money and property of the people named without attempting or intending to give anything of value, or anything of equivalent value.

Wherefore, we respectfully submit and urge that the conviction of the defendant Marshall should be reversed on all counts.

Respectfully submitted, -

JOHN J. IRWIN,

Attorney for Appellant.

No. 10,298.

IN THE

4
United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

NORMAN H. MARSHALL,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

BRIEF OF APPELLEE.

CHARLES H. CARR,

United States Attorney,

JAMES M. CARTER,

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CHARLES H. VEALE,

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Attorneys for Appellee

FILED

JUN 30 1944

1 2 3 4 5 8 9 10 — Use of mails.

11

— Conspiracy do
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3 4 5 8 9 10 . suspended, 5 year
probation starting at ~~end of~~ expiration
of sentences on 1, 2, 11.

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No. 10,298.

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

NORMAN H. MARSHALL,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

BRIEF OF APPELLEE.

Statement of Basis of Jurisdiction.

Appellant's opening brief accurately sets forth the statement of basis of jurisdiction and reference is made thereto.

Statement of the Case.

The appellant, Norman H. Marshall, and three other defendants on trial were convicted and pursuant to which judgment was entered against the appellant. The indictment charge the appellant and the defendants, Helen May Fawkes, Llewellyn F. Marsh, Albert A. Martinez and Charles W. Talbott, with having devised and intended to devise a scheme and artifice to defraud and with having obtained money and property from certain persons named in the indictment and other persons to the grand

jurors unknown, and from members of the general public who answered advertisements inserted in various newspapers and other publications who had signed letters bearing their names and addresses, by means of false and fraudulent pretenses, representations and statements, which said scheme and artifice was in substance as follows, to-wit:

Defendants would insert and cause to be inserted in the classified columns of newspapers throughout the United States, advertisements for resident managers in various localities, stating therein that the business connection would be permanent, that the income would reasonably be \$6500 and more yearly, and that a cash deposit in varying amounts ranging from \$1500 to \$3750 was required and would be secured and returnable;

The defendants under the name of Direct-U-Systems would mail letters to the persons intended to be defrauded, who had responded to the advertisements and acknowledge receipt of the reply and state that a representative would call to explain the proposition in person, that the proposition was not a promotional matter, that the company had nothing to sell, that it was desired to select a person interested in a permanent connection which increases yearly, and that the company must virtually guarantee the success of the person to be selected; that the Direct-U-System was a corporation organized under the laws of the State of California, was a company of good reputation, of high integrity, of unlimited credit standing, and the exclusive manufacturers of electrical directories for display in lobbies of hotels; that the company was in a position to give permanent, lucrative and noncompetitive employment to persons who would agree to become franchise holders and distributors of said directories in a given

territory and who would pay sums of money to the company as advance rentals on a specified number of said electrical directories; that earnings of \$6500 and more per year were being made the franchise holders holding franchises from the Direct-U-Systems;

That the business of Direct-U-Systems was international in scope, that the company had a long record for successful operation and was in a position to render satisfactory and continuous services;

That the directories of the Direct-U-Systems were unique and the first and only advertising medium of its kind to be on the market;

That the directories of Direct-U-Systems were in great demand by hotels and business men, and that space for installation of the boards in the lobbies of the hotels and subscriptions for advertising thereon were readily obtainable;

That the directories of Direct-U-Systems were protected by patents and patents pending;

That the directories of Direct-U-Systems would be shipped to franchise holders promptly upon order.

The indictment charged that each and all of said representations, pretenses and promises were false and known to be false and were made to persons intended to be defrauded as a part of said scheme and artifice to defraud; that said representations, pretenses and promises were made by means of certain oral statements, writings and papers so worded, constructed and expressed as to deceive, and were then and there intended to deceive said persons intended to be defrauded, and any person or persons who might hear or receive them, and that in execution of the scheme the mails were used.

Count eleven charges that the defendants did knowingly, wilfully, unlawfully, corruptly, fraudulently and feloniously conspire, combine, confederate and agree among themselves and with each other to commit certain offenses against the United States, that is to say, to devise a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations and promises from those persons named and described in count one of the indictment as the persons intended to be defrauded, and for the purpose of executing such scheme and artifice to place and cause to be placed in the Post Office establishment of the United States letters, circulars, advertisements, newspapers, bulletins and other mail matter addressed to various and sundry persons;

The scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations and promises which said defendants so conspired to devise and execute was set forth with particularity in the first count of the indictment and realleged and reincorporated in the eleventh count of the indictment as if again set forth at length; for the indictment in full see R. 2-56.

Statement of Facts.

The appellant and defendants Llewelyn F. Marsh, Albert A. Martinez and Charles W. Talbott in the summer of 1938 organized and caused to be organized a corporation known as Direct-U-Systems. Prior to the organization of Direct-U-Systems, the appellant and the defendants had operated from 1935 to the spring of 1938 under the name of National Directory Systems. In that venture they had offered for sale to various persons at numerous

places in the United States franchises covering definite territory to use and display electrical hotel directories as an advertising device, which said device was very similar in appearance and operation to the device used by Direct-U-Systems, as shown by Defendant's Exhibit ZZ [R. 480]. In that venture the National Directory Systems had received an appreciable amount of money in the sale of franchises, but no profits had been received by any of the purchases as of the franchises and the venture failed. Shortly after the appellant and his associates withdrew from the National Directory Systems, they organized the Direct-U-Systems and operated the business upon the same plan which had been used by the National Directory Systems, and sold and collected from a large number of persons, including those named in the indictment, a sum of money amounting to many thousands of dollars;

The appellant and his co-defendants placed and caused to be placed in numerous newspapers throughout the country advertisements intended to interest persons to whom franchises for the use of electrical hotel directories might be sold. Upon receipt of a reply from such advertisements, it was the practice of appellant and his co-defendants to acknowledge receipt of such replies, in which acknowledgment the persons would be informed that the nature of the business was such as to require personal contact, and that a representative of the company would in due course call upon the prospective purchaser and would inform him of the nature of the business, and all of the details connected therewith. Thereafter, a person representing himself to be an agent of Direct-U-Systems would call upon the prospective purchaser and by oral statements would represent and pretend that the Direct-

U-Systems was a corporation organized under the laws of the State of California; that it was a company of good reputation and high integrity, of unlimited credit standing and the exclusive manufacturers of electrical directories for display in the lobbies of hotels; that the company was in a position to give permanent, lucrative and noncompetitive employment to persons who would agree to become franchise holders and distributors of the said directories in given territories, who would pay sums of money to the company as advance rentals on a specified number of directories; that a person who would become a franchise holder would be given the exclusive right to install directories in his territory and to sell advertising space to business concerns thereon at certain stipulated weekly, monthly or yearly rates, and to keep all the money so derived except a certain percentage which was to be remitted to the company as royalty, as his own, and that large earnings pyramiding as the number of boards increased would be earned thereby by the franchise holder; that earnings of \$6500 and more per year were being made by franchise holders and would be made by others who would take franchises from Direct-U-Systems;

That the business of the company was international in scope and that the company had a long record of successful operation and was in a position to render satisfactory and continuous service;

That the directories of Direct-U-Systems were unique and the first and only advertising medium of this kind to be on the market; that the directories of Direct-U-Systems were in great demand and subscriptions for advertising thereon were readily obtainable;

That the directories were protected by patents and patents pending and that franchise holders would be with-

out any competition in distributing the said directories and selling advertising space thereon;

That the directories of Direct-U-Systems would be substantially constructed and free from defects and mechanical errors and would render steady and dependable service and would be shipped to franchise holders promptly upon order;

That the Direct-U-Systems would maintain and service the directories shipped to the franchise holders and would at all times keep said directories in good working order and mechanical condition;

As a result of said representations by the appellant and his co-defendants and their agents, Harold E. Weeks of New York City, New York; Ralph H. Bergen of Richmond, California; Ralph A. Burke of Oakland, California; Cecil I. McReynolds of Washington, D. C.; E. M. Schutt of Cleveland, Ohio, and L. C. Whitney of Alameda, California, responded to advertisements in newspapers and each purchased franchises and are the persons alleged to have been defrauded in the respective counts in the indictment. No royalties were ever paid by any of the purchasers to the company and no profit was had by any of them;

Each of the letters set forth in the respective counts in the indictment were admitted mailed by the defendants and each of the defendants had knowledge of the method of the business and the fact that the mails were being used to conduct the business; likewise each of the defendants actually engaged in the business. The appellant was actually engaged in the business from its inception to and including the date of the filing of the indictment;

Each of the purchasers named in the various counts in the indictment, after they had been approached by the

appellant, his co-defendants, or his agents, executed with the company an agreement, which set forth among other things respective amounts that the respective victims paid or agreed to pay as lease rental for the first twelve months of the contract; and further that the lessor, Direct-U-Systems, was to receive from the lessee, the purchaser, a 20% royalty in addition to the lease rental above mentioned; and further in addition to the lease rental and royalty, the lessee, the purchaser, was obligated to pay to the lessor the further sum of 50c for each advertising card furnished for the lessee's subscribers each month;

None of the mechanical devices delivered to the respective purchasers operated satisfactorily, nor were the devices delivered promptly as it had been represented they would be; some were never delivered.

Purchasers of the franchises were unable to dispose of the advertising space provided by the device, and of the contracts obtained for advertising space in such device, the major part were cancelled by the advertisers either because of the inability of the purchasers to obtain and put into operation the directories, or the failure of mechanical operation of the directories after they had been installed.

Of those directories actually delivered, none operated successfully and necessary parts and repairs for the successful operation of the device were either not furnished at all or with such delay on the part of the appellant and his associates as to make it impossible for the purchasers

to procure and maintain the advertising service to their clients;

Each of the purchasers were obliged to and did carry on extensive correspondence with the appellant and his co-defendants with respect to the faulty operation of the directories or with the view of being reimbursed for the funds advanced by them under the terms of their respective franchise agreements. As a result of such correspondence each of the purchasers of the franchise agreements, as set forth in the respective counts in the indictment, was offered by the appellant and his co-defendants a document or settlement agreement purporting to be a re-purchase agreement by the terms of which the territory which had been assigned to the respective purchaser was to be resold to other persons by the defendants, and the original purchaser was to be reimbursed out of profits to be earned by the new purchaser.

In some instances these re-purchase agreements were accepted and in other instances, refused; but in no instance did any of the purchasers ever receive a full return of his investment and in no instance did any of the purchasers of the franchise agreements receive or in any manner obtain any profits or pay to the defendants any royalty.

Questions Presented by the Appeal.

The sole question presented on this record for consideration by this Honorable Court is the sufficiency of the evidence.

ARGUMENT.

I.

The Allegations Contained in the Indictment Are Sufficient to and Do Properly Charge the Violation of the Mail Fraud and Conspiracy Statutes.

The appellant contends at page 10 of his opening brief, "We take the position that the remaining allegations of the indictment commencing with 'That thereafter,' the defendants would contact the persons to be defrauded and by oral statements, etc., would represent and pretend, is, by the language of the indictment, surplusage." [R. 5.] Obviously this contention is based upon the wording of that part of the indictment beginning with the words "That thereafter" [R. 5]. A reasonable and fair construction of the allegations contained in the indictment readily refute appellant's contention, since allegations as to certain representations made by the appellant and his co-defendant which are found in the indictment after the use of the wording in question, clearly show that such representations were made to the respective victims as inducements to cause them to part with their money and before any of them had parted with money. The evidence is uncontradicted that all of the representations appearing in the indictment after the words in question were made by appellant, his co-defendants, or agents, to the purchasers at a time when they were yet prospective purchasers and for the express purpose of inducing them to part with their money. Therefore, the most that may be said is that there appears to be a misarrangement in form and order of the allegations.

Where there is a misarrangement in form and order of the allegations of an indictment not prejudicing the defend-

ant, although subject to criticism, there is no ground for reversal.

Cowl v. United States, 35 F. (2d) 794 (C. C. A. 8).

We quote from page 797:

“While the indictment here under consideration is cumbersome, lacking in clarity, intertwining statements of the scheme to defraud with methods employed, we do not think it should be held defective on the ground of duplicity, granting that such question was preserved in the record. It sets forth but one general scheme to defraud. The indictment charges that by means ‘hereinafter described’ the victims were to be induced to give up their money. Some of the matters which counsel urge as merely recitals were in fact tied up to and a part of the scheme to defraud, though not set forth where the attempt is made to describe the same.”

Surplusage consists of allegations of matter wholly foreign and impertinent to the cause, unnecessary averments, or allegations without which the pleading would yet be adequate. Words adequately charging the distinct offense cannot be rejected as surplusage.

Goldstein v. United States, 63 F. (2d) 609.

Quoting from page 612:

“Surplusage in an indictment consists of allegations of matter wholly foreign and impertinent to the cause, unnecessary averments, or allegations without which the pleading would yet be adequate * * *

“Mere surplusage in an indictment may be disregarded, and in a case such as this, where a number of false representations are alleged tending to estab-

lish the existence of the scheme, it is not necessary for the government to prove all of the false representations charged if proof of a lesser number lays a sufficient foundation for a finding by the jury that the scheme was in fact devised."

See, also:

Creel v. United States, 21 F. (2d) 690.

Again in:

Stumbo v. United States, 90 F. (2d) 828,

in discussing the adequacy of pleading, the court had to say at page 831 of the opinion:

"The question we have to decide is not whether the present indictment is a model pleading, or whether it could have been made more definite and certain, but whether it contains the elements of the offense intended to be charged, and sufficiently apprises the defendant of what he must be prepared to meet, so that the judgment may be a bar to further proceedings against him for the same offense."

Where words are employed in an indictment which are descriptive of the identity of that which is legally essential to the charge in the indictment, such words cannot be stricken out as surplusage.

Butler v. United States, 20 F. (2d) 570.

We, therefore, respectfully submit that when proper consideration is given the language of the indictment, as well as the evidence proffered by the Government before closing its case, the contention of the appellant is without merit.

II.

The Evidence Presented by the Government Was Sufficient to Put the Appellant to His Defense.

It is fundamental that the trial court will exercise its discretion as to whether or not the Government has made out a *prima facie* case, and if it so determines, the defendant may be put to his defense. The evidence presented by the Government and especially the stipulated facts that the count letters in question set forth in the substantive counts were mailed by appellant and his co-defendants to the respective persons named in each of the substantive counts, and the sales made to and money received from the respective purchaser, left no alternative to the appellant save to defend upon the ground that he acted in good faith. Therefore, the trial court had ample justification for the denial of appellant's motion to dismiss at the close of the Government's case.

III.

The Evidence Was Sufficient to Sustain and Justify the Conviction on Any One of the Nine Counts in the Indictment.

At the outset it will be well to discuss briefly the nature of the business of the appellant and its origin. In the summer of 1938 the appellant and his co-defendants organized a corporation known as Direct-U-Systems. It was proposed to manufacture and lease out to various and sundry persons a mechanical device in the form of a cabinet, which was to be used in the lobbies of hotels to the end that guests of the hotel might readily be directed to the name and locality, in the particular city where the hotel was located, of different business and professional enterprises which the guests might have

need of. It was the avowed purpose to so construct and finish the mechanical device so as to blend in with the surroundings in which it was to be placed. The appearance of the proposed cabinet was similar to defendant's Exhibit ZZ [R. 480]. As will be noted the upper part of the cabinet was to contain a map of the city in which the hotel was located. On either side of the cabinet, provision was made for the insertion of various types of advertisements. In the center of the machine and beneath the map, there was to be a rotating device which went in operation automatically and changed cards upon which advertisements appeared. Electrical equipment was to be furnished so that in the operation of the machine an electric button was placed opposite each advertisement, which when pressed would cause a red light to appear on the city map showing the location of the hotel where the machine was located and a white light more or less in the location where the particular place of business might be found. In other words, if a guest desired to purchase a pair of shoes, he would press the electric button opposite the name of a shoe merchant, then look at the map and ascertain the approximate locality of the shoe merchant.

The machines in question were the property of Direct-U-Systems and were leased to various and sundry persons for use in a specified territory. The term of the lease was to be determined by the parties at the time the lease agreement was entered into. In some instances it was three years, and in others as much as five years. Upon signing a lease contract the purchaser was obliged to pay in cash a stipulated amount per year for each cabinet to be used by him in his territory. Hotel sites for the use of the machine in a territory were to be procured

by Direct-U-Systems, and the cabinets then built and finished to comport with the interior finish of the particular hotel. The cabinets made provision for forty or fifty advertising spaces. This space was to be sold by the lessee, the sales to be reported to the company, and later the cabinets were to be delivered equipped with all of the advertising spaces and printed matter necessary therefor intact. The lessee was to retain the funds received for the sale of advertisements, less 20% which was denominated as a royalty in addition to the lease rental and payable to the company upon installation and collection. In addition the company was to receive 50¢ for each advertising card furnished for the lessee's subscribers each month. For the convenience of the court, it may be said that each of the purchasers named in the substantive counts in the indictment with the exception of Cecil I. McReynolds, executed an agreement of the nature and kind above described, a copy of which is contained in Government's Exhibit No. 4 [R. 78], which, as will be noted, was an agreement entered into with Harold E. Weeks. In this connection it should be borne in mind that the first lease contract with which the indictment is concerned was made in August of 1938, and the last in November of 1940, with intermittent sales to other parties named in the indictment.

The plan of operation was derived from the experience of the appellant and his co-defendants in a previous venture, known and operated as National Directory System, a corporation, whose business was identical with that of Direct-U-Systems. The appellant had owned or controlled at least 70% of the capital stock of the National Directory System, and had sold this stock to one Ralph Young [R. 74 and 75]. After this sale, and with knowl-

edge that the National Directory System had been a failure, the appellant and his co-defendants then incorporated Direct-U-Systems and began the operations complained of in the indictment.

The offense defined by Title 18, Section 338, United States Code, commonly known as the mail fraud statute, calls for the presence of two essential elements (1) the existence of some scheme or artifice to defraud; and (2) the placing or causing to be placed in the Post Office letters, bulletins, etc., for the purpose of executing or attempting to execute the scheme. Whether such a scheme was formed may be established by facts and circumstances and the reasonable inferences and deductions which fairly may be drawn from them.

Pietch v. United States, 110 F. (2d) 817 (C. C. A. 10).

In the case of *Durland v. United States*, 161 U. S. 306, which was decided in 1895, and which is cited in numerous subsequent mail fraud cases, the court points out at page 313:

“It is common knowledge that nothing is more alluring than the expectation of receiving large returns on small investments * * * any scheme or plan which holds out the prospect of receiving more than is parted with appeals to the cupidity of all.

“In the light of this the statute must be read, and so read it includes everything designed to defraud by representations as to the past or present *or suggestions or promises as to the future*. The significant fact is the intent and purpose.” (Italics ours.)

Therefore, the significant fact in cases of this nature is the intent and purpose behind the scheme. In the case

of *Weiss v. United States*, 122 F. (2d) 675, c. d. 314 U. S. 697, the court had before it the violation of the mail fraud statute. The opinion reviews numerous authorities and the question of intent to defraud was discussed at great length.

“The intention to devise a scheme to defraud necessarily precedes the formation of any such scheme, but the completion of the entire scheme is not necessary to a violation of the statute. An intention to devise a scheme to defraud or for obtaining money by false pretenses is sufficient if enough of the scheme is formed to constitute an offense and the mails are used for the purpose of executing or attempting to execute the part which is completed. * * *

“The variety of means which may be employed in the execution thereof is limited only by the ingenuity of the schemer. The statute is violated if, having devised or intended to devise a scheme to defraud, the mails are used for the purpose of executing such a scheme, or attempting to do so. It is not necessary that where the artifice was devised the schemers shall have worked out all of the details of its execution. The law does not define fraud. It needs no definition; it is as old as falsehood and as versable as human ingenuity.”

The use by the appellant and his co-defendants of means and methods already known to them to be unsound, valueless and unprofitable of itself is a strong inference of a scheme or plan to defraud. Representations to prospective purchasers of the Direct-U-Systems that the business was new and novel, and in effect had no competition, leaves no doubt that there was a scheme and artifice to defraud.

The appellant relies upon the proposition that a false representation does not amount to fraud unless there is specific fraudulent intent at the time the representation was made. With this we find no fault but no amount of honest belief that the enterprise would ultimately make money can justify or excuse false representations sent through the mails to obtain money for the enterprise.

Foshay v. United States, 68 F. (2d) 205 (C. C. A. 8);

Busch v. United States, 52 F. (2d) 79;

Linn v. United States, 234 F. 543;

Menefee v. United States, 236 F. 826;

Pandolfo v. United States, 286 F. 8.

We venture the assertion that if the appellant and his co-defendants had been entering upon any enterprise there might be some justification for the contention that they were acting in good faith. The facts are that they were not. They were continuing a plan or method of operation which they knew had been proved to be a failure. That fact, coupled with numerous other activities on the part of appellant and his co-defendants, leaves no basis for the contention that there was no specific fraudulent intent at the time the representations were made.

Appellant relies upon the contention that it is not enough that there be evidence of a scheme to defraud, but it must also be shown that the mails were used as a part of the scheme charged, and that each letter relied on was not sent out until after the scheme of fraud had been born. As regards the question of whether or not the mails were used as a part of the scheme charged, it is obvious, after an examination of the respective agreements

entered into, that the scheme or artifice of the appellant and his co-defendants was not limited to the procurement and acceptance of the original cash payment, but rather had for its objective the procurement of lease rentals. It should be noted that the rentals paid were for the first term and it was anticipated that rentals would be collected for subsequent years. Therefore, the scheme was a running or continuous plan. All of the letters set forth in the respective substantive counts were well within the period and were used as a part of the scheme charged. Certainly, all of the letters involved in the respective counts were sent out after the scheme was born and while it was still yet in operation. If, as suggested by appellant, the scheme had been accomplished when the first annual rentals had been received, it is difficult to understand the terms of the respective agreements made with the victims, which provided among other things for the construction and delivery of the advertising device after the money was received, and further to furnish service for such machine during the life of the agreement.

The appellant at pages 13 to 17, discusses the testimony of Harold E. Weeks, alleged to be a victim and subject of the alleged scheme to defraud in counts five and eight of the indictment. The agreement made with Mr. Weeks by Direct-U-Systems through its agent C. S. Wallace, Government's Exhibit No. 4 [R. pp. 78 to 84, incl.] provides that the agreement should remain in force for a period of three years and that the lease rental would be \$750 per year for each machine containing 60 spaces for advertisements and \$500 per year for each machine containing 40 spaces, and that the second and succeeding years would be at a lesser rate. The agreement was made on

the 27th day of July, 1939, and by its terms would not expire until July 27, 1942. The letters mentioned in the respective counts are well within that period. In all of the other counts the same situation is true except as to the respective duration of the different agreements. The appellant likewise contends that Mr. Weeks and each of the other alleged victims signed receipts at or shortly after the dates when they paid the respective sums of money; and it is the contention of the appellant that such receipts indicate no other or further obligation on the part of appellant and his co-defendants, when in truth and in fact each of the alleged victims were under agreement for a definite and fixed period of time, which agreement also required services and obligations on the part of appellant and his co-defendants. It is difficult indeed to appreciate the contention of the appellant, that the count letters in question were not used as a part of the scheme charged.

We submit that the representation that the alleged victims would, as others were doing, profit handsomely, was false and fraudulent and known to be false and fraudulent, since in truth and in fact no earnings at all were being made by any of the franchise holders, but on the contrary from the period beginning in August of 1938, to and through October of 1940, none of the alleged victims had received any earnings as the appellant well knew.

The respective purchasers were told that the directories of Direct-U-Systems were protected by patents and patents pending, and that the franchise holders would not have any competition in distributing said directories and selling advertising space thereon, whereas in truth and in fact the directories were not protected by patents and patents

pending. The testimony of Ira H. Arnold [R. 211-212] was that as Assistant Chief of the Application Division of the United States Patent Office, he had made a search of certain designated names of companies from January 1, 1922, to September 1, 1942, and did not find any patent issued under the name of Norman H. Marshall on a directory device, and that he did not find any issued to Charles W. Talbott, Albert Martinez, A. Kane, Ray Young nor L. F. Marsh.

The representation that for a consideration of an annual rental fee for each directory furnished, they would immediately supply as many devices as needed for placing in hotels and would install and maintain same at all times without cost or expense to the franchise holder, was false and fraudulent since such directories as were furnished were not received by the franchise holders promptly and when furnished were never placed in a condition so as to operate properly, as is disclosed by the testimony of the respective purchasers named in the various counts, as well as by purchasers not named in the counts.

The representation that the directories of the Direct-U-Systems were unique and the first and only advertising medium of this kind to be on the market was shown to be false, since, in the testimony of Ralph Young, T. E. Morgan, E. M. Schutt, Charles S. Wallace, H. R. Browne and C. I. McReynolds, it was definitely shown that other and different devices of a similar nature were competing with Direct-U-Systems.

The representation that the company was of good standing and financially able to carry out its agreements was definitely shown to be false by the witness Charles S. Wallace, who identified letters received by him from the ap-

pellant, excerpts of which appear in the record as part of Government's Exhibit No. 25 [R. 118 to 125, incl.].

The foregoing representations, as well as others not here mentioned, but which are contained in the record, we believe furnish ample justification for the action of the trial court in denying appellant's motion for a directed verdict at the close of the Government's case.

IV.

The Evidence Was Sufficient to Sustain the Conviction for Violation of the Conspiracy Statute.

The appellant contends that count eleven of the indictment which charges conspiracy must fall, since it is dependent upon the existence of the scheme as alleged in count one. The offense charged in count eleven was that appellant and his co-defendants had conspired, confederated and agreed among themselves and with each other to devise a scheme and artifice to defraud, and to obtain money and property by means of false and fraudulent pretenses, representations and promises. This court, in the case of *Marino v. United States*, 91 F. (2d) 692, defined conspiracy as:

"A combination of two or more persons, by concerted action, to accomplish a criminal or unlawful purpose, or some purpose not in itself criminal or unlawful, by criminal or unlawful means."

The same case determines that the gist of the offense is the confederation or combination of minds and that the crime is complete when an overt act is done by at least one of

the conspirators in furtherance of the conspiracy. The uncontradicted evidence in the case at bar is that the appellant and his co-defendants in the summer of 1938 agreed to and did engage in the business described in the indictment. The appellant and the defendant, Mr. Talbott, managed the office, and the other co-defendants and agents went abroad to consult with prospective purchasers who had answered advertisements. Each of the parties had knowledge of the nature of the business and the manner of its conduct. Each had knowledge that the business was similar in nature to a business they had theretofore engaged in, namely, the National Directory System, and that said last named business had not been profitable. The appellant had knowledge that he had sold his interest in the National Directory System to Ralph Young, who in turn organized another company in which the appellant had an interest, and that said last company referred to was engaged in the same type of business as was the appellant. Further, as late as October of 1940, the appellant and his co-defendants sold a franchise to Arthur K. Barnes, and among other things told Barnes that the machines in question were operating successfully in various hotels, when he, the appellant, knew, first, that there was not a directory operating successfully in any hotel, and second, that at that time the Direct-U-Systems was engaged in voluminous correspondence with Harold Weeks of New York relative to the unsatisfactory operation and unprofitable results of the machines which Mr. Weeks had tried to operate.

The record is replete with overt acts committed by the appellant and his co-defendants in furtherance of the conspiracy.

A conspiracy is a continuing offense as long as it is in progress of execution as manifested by overt acts to effect the purpose thereof.

Eldredge v. United States, C. C. A. 10, 62 F. (2d) 449;

Talman v. United States, C. C. A. 10, 67 F. (2d) 716;

Powe v. United States, C. C. A. 5, 11 F. (2d) 598.

Conspiracy being a partnership in criminal purposes, it is not essential that all of the conspirators join in an overt act, the act of one making the guilt of all complete.

Curtis v. United States, C. C. A. 10, 67 F. (2d) 943;

Williams v. United States, C. C. A. 6, 3 F. (2d) 933.

It is conceded by appellant that there is evidence to support one or more of the overt acts charged in the indictment. This concession, therefore, leaves the sole proposition as to whether or not there was a scheme, and if so, a conspiracy to commit the scheme charged.

Conclusion.

We respectfully urge that the trial court did not err in not granting defendant's motion for a directed verdict on counts one, two, three, four, five, eight, nine, ten and eleven at the conclusion of the Government's case; nor in refusing to grant the defendant's motion when it was renewed at the close of all the evidence. We respectfully submit that the evidence was sufficient (a) to put the defendants to their defense; (b) to submit the matter to the jury, and (c) to sustain the conviction, and we, therefore, urge that the conviction of the defendant Norman H. Marshall be sustained on all counts.

Respectfully submitted,

CHARLES H. CARR,
United States Attorney,

JAMES M. CARTER,
Assistant U. S. Attorney,

CHARLES H. VEALE,
Assistant U. S. Attorney,
Attorneys for Appellee.

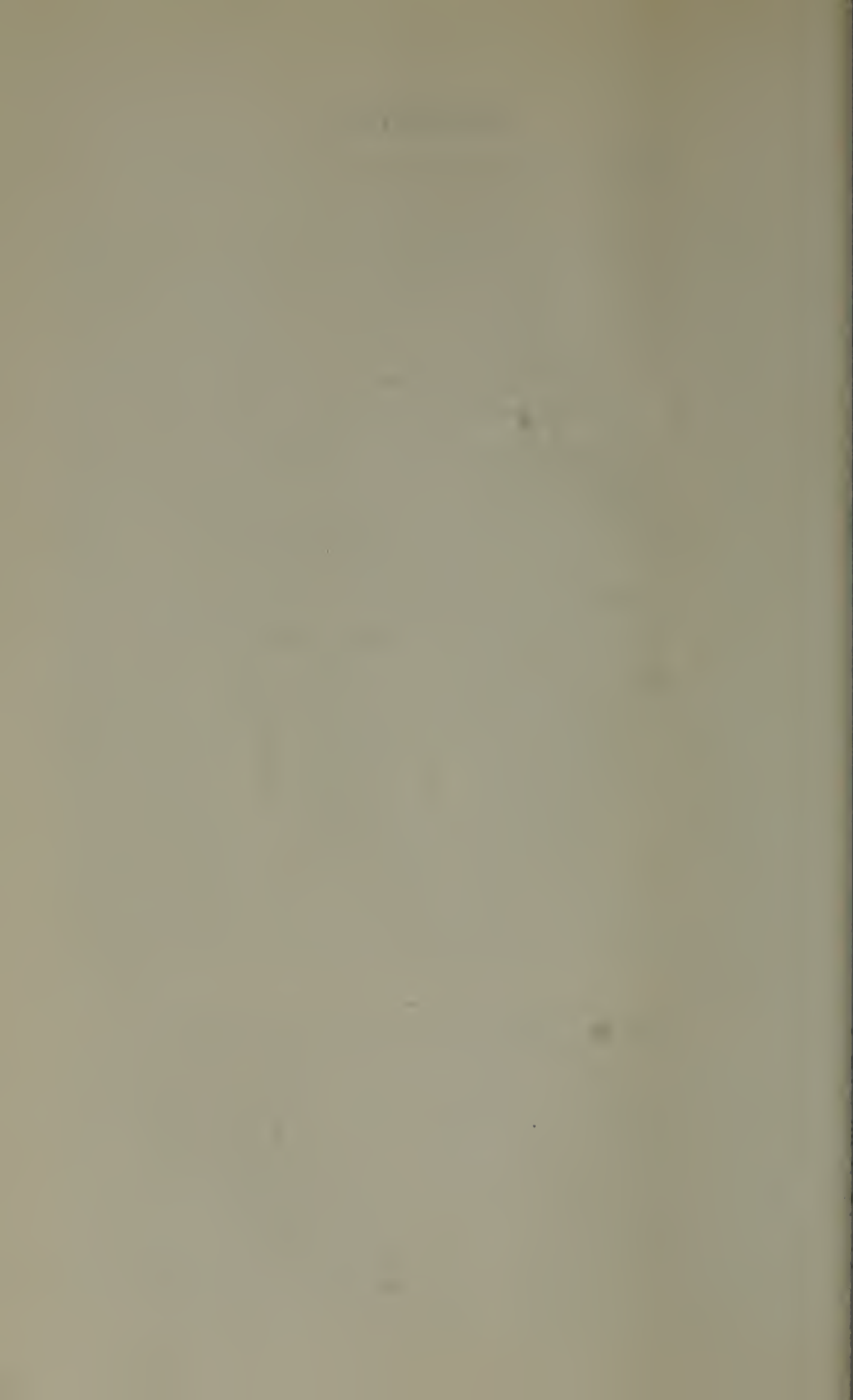
APPENDIX.

Title 18, United States Code, Section 338:

“Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, * * * shall, for the purpose of executing such scheme or artifice or attempting so to do, place, or cause to be placed, any letter, postal card, package, writing, circular, pamphlet, or advertisement, whether addressed to any person residing within or outside the United States, in any post office, or station thereof, or street or other letter box of the United States, or authorized depository for mail matter, to be sent or delivered by the post office establishment of the United States, or shall take or receive any such therefrom, whether mailed within or without the United States, or shall knowingly cause to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such letter, postal card, package, writing circular, pamphlet, or advertisement, shall be fined not more than \$1,000, or imprisoned not more than five years, or both.”

Title 18, United States Code, Section 88:

“If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than \$10,000, or imprisoned not more than two years, or both.”



United States
Circuit Court of Appeals
For the Ninth Circuit.

JAMES A. JOHNSTON, Warden, United States
Penitentiary, Alcatraz, California,
Appellant,
vs.

CECIL WRIGHT,
Appellee.

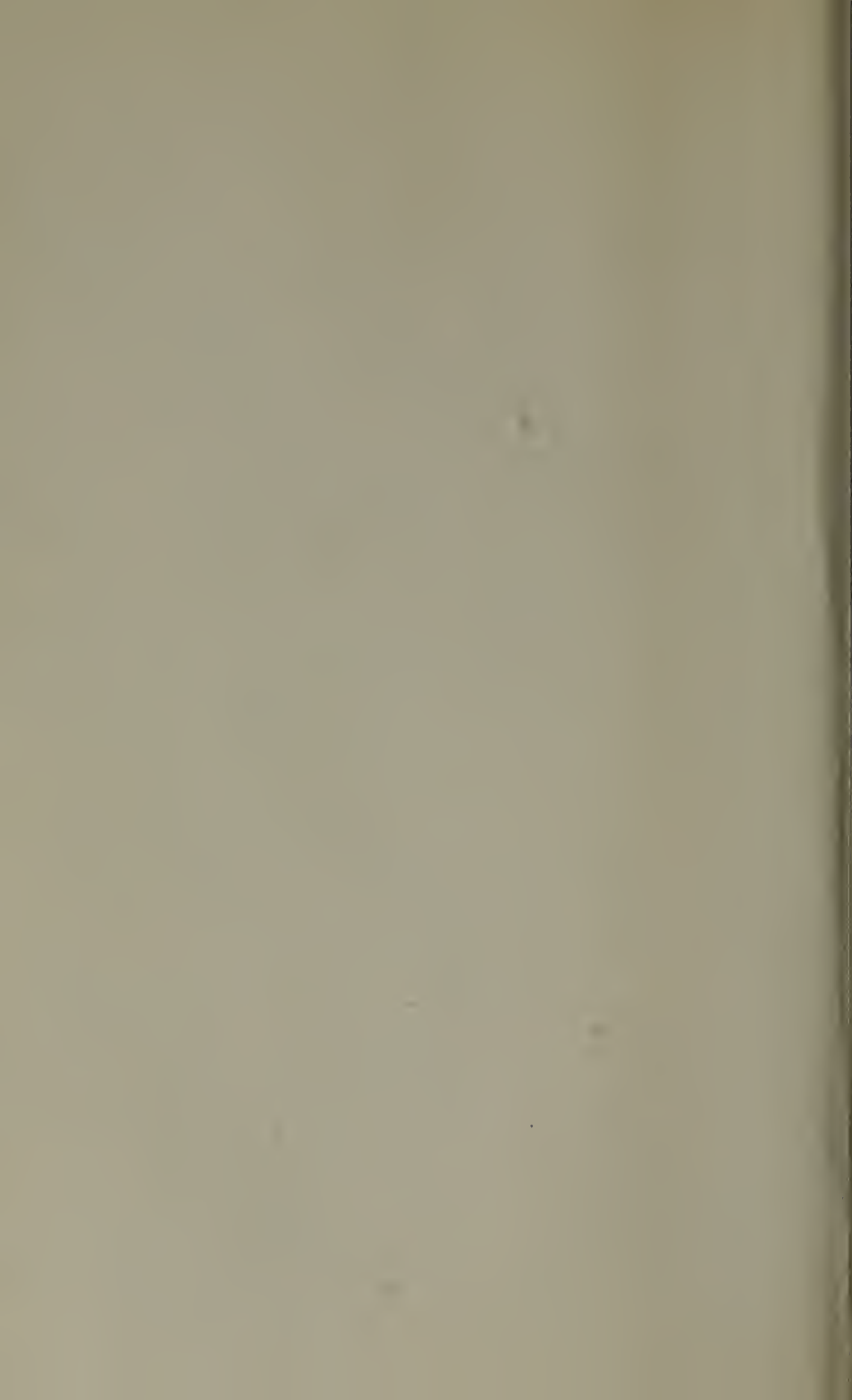
Transcript of Record

Upon Appeal from the District Court of the United States
for the Northern District of California,
Southern Division

FILED

FEB 15 1943

PAUL P. O'BRIEN,
CLERK



United States
Circuit Court of Appeals
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JAMES A. JOHNSTON, Warden, United States
Penitentiary, Alcatraz, California,
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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Attorneys for Respondent and Appellee.

To the Honorable William Denman, one of the
Judges of the Circuit Court of Appeals for the
Ninth Judicial Circuit.

Habeas Corpus No. 23744

CECIL WRIGHT,

Petitioner,

vs.

JAMES A. JOHNSTON, Warden, United States
Penitentiary, Alcatraz, California,
Respondent.

PETITION FOR A WRIT OF HABEAS
CORPUS AD SUBJICIENDUM

(Index, Citations and Statutes Cited Not Copied)

State of California
County of San Francisco—ss.

MOTION AND AFFIDAVIT TO PROCEED IN
FORMA PAUPERIS

Comes now the petitioner, Cecil Wright, being first duly sworn, deposes and says: That he is a citizen of the United States, of legal age, and that he is in the custody of the United States of America and is being illegally restrained of his liberty in the United States Penitentiary, on the Island of Alcatraz, in the State of California.

That he wishes to file and prosecute for a writ of habeas corpus ad subjiciendum, but that by reasons

of his poverty, he is without funds, and he is therefore unable to pay the cost of this action, filing fees, or other cost, and that he has neither property or security with which to secure payment thereof.

That he honestly believes he is lawfully entitled to the redress he seeks; that the foregoing petition is meritorious and is brought in good faith; that this affidavit is made for the purpose of availing affiant of the rights and privileges in such case provided by Section 832 of Title 28 of the United States Code.

Wherefore, Affiant respectfully prays that he may have leave to prosecute said petition for a writ of habeas corpus [1*] ad subjiciendum in forma pauperis without cost or fee pursuant to said Statute.

CECIL WRIGHT,
Affiant.

(Stamp indicating Petitioner is a citizen of the United States.)

(Verification.) [2]

*Page numbering appearing at foot of page of original certified Transcript of Record.

[Title of Court and Cause.]

PETITION FOR A WRIT OF HABEAS
CORPUS AD SUBJICIENDUM

To the Honorable William Denman, Circuit Judge.

Comes now the petitioner Cecil Wright a prisoner illegally restrained of his liberty in the United States Penitentiary, Alcatraz, California, by color of authority of the United States, and he is in the custody of James A. Johnston, Warden of the above-named Penitentiary, located in the jurisdiction of the Honorable William Denman; viz., by color of the authority of warrants of commitments heretofore issued out of the District Court of the United States for the Eastern District of Illinois, Danville, pursuant to the sentences of said Court upon judgments of convictions therein rendered and entered against your petitioner pursuant to his trials therein upon indictments theretofore returned into and filed in said Court charging this petitioner with the commission within the said district and division of penal offenses against the laws of the United States of America, and the restraint is made and continued wholly upon the pretended and colorable warrants and authority aforesaid and none other.

STATEMENT

That he the said Cecil Wright is restrained of his liberty on a commitment in case No. 11032 which has never been executed against the said Cecil

Wright by the United States Marshal from the trial Court.

II.

That his convictions were in violation of the Fifth and Six Amendments to the Constitution of the United States which guaranteed this petitioner the right to have the effective assistance of counsel for his defense, and compulsory process for obtaining witnesses in his favor as well as the right to have a fair trial before an impartial jury. [3]

III.

That the petitioner has served the maximum sentence imposed upon him for violation of Sections 88, 313, 315 and 408 of 18 USCA, and further restraint is double jeopardy when as in this instant case the sentencing Judge testified by deposition on direct interrogatories that he wrote the petitioner shortly after the convictions while petitioner was incarcerated in the state prison and told him that the sentence had begun.

IV.

That he filed for a writ of habeas corpus in the United States District Court for the Northern District of California which is attached hereto as though incorporated herein at length and marked petitioner's Exhibit "A".

V.

That an order to show cause was issued on April 6, 1942, which is attached hereto as though incor-

porated herein at length and marked petitioner's Exhibit "B".

VI.

That the respondent having failed to show cause on the appointed date set by the Court, the petitioner filed supplemental and amendatory allegations which is attached hereto as though incorporated herein at length and marked petitioner's Exhibits "C".

VII.

That the respondent filed his return to order to show cause together with commitments Nos. 11074 and 11032, transfer order and record of Court commitments which is attached hereto as though incorporated herein at length and marked petitioner's Exhibit "D".

VIII.

That the petitioner filed his traverse to return on order to show cause which is attached hereto as though incorporated herein at length and marked petitioner's Exhibit "E". [4]

IX.

That the respondent filed his return to writ of habeas corpus which is attached hereto as though incorporated herein at length and marked petitioner's Exhibit "F".

X.

That the Court made an order appointing counsel, but petitioner entered his motion for withdrawal of counsel so that he could appear and plead

in proper person which is attached hereto as though incorporated herein at length and marked petitioner's Exhibit "G".

XI.

That the petitioner entered his motion for further proceedings which is attached hereto as though incorporated herein at length and marked petitioner's Exhibit "H".

XII.

That the petitioner was produced in Court and testified that he was denied the right to have the effective assistance of counsel for his defense; that he supported his testimony by certified copies of the trial court's records; that he gave the respondent's counsel sufficient time to take deposition from the trial judge and the former United States Attorney; that the trial judge testified on direct interrogatories that he wrote to the petitioner at the state prison and told him the sentence had begun; that in furtherance the trial judge testified that the record of testimony was never transcribed and that the petitioner did not object to the appointment of a colored counsel; that other testimony given by the trial judge was in direct conflict with the certified records of the trial court which was used as exhibits to support petitioner's allegations; that the respondent's counsel failed to refute petitioner's allegations and on direct cross examination the respondent's counsel failed to break down the petitioner's defense; that the petitioner sustained the

burden of proof by the preponderance of the evidence that he was denied the right to have the effective assistance of counsel for his defense; [5] that he sustained the burden of proof by the preponderance of the evidence that he was denied compulsory process for obtaining witnesses in his favor; that he sustained the burden of proof by the preponderance of the evidence that he was denied the right to a fair trial by an impartial jury; that he sustained the burden of proof that his sentence started on September 17, 1930, and expired in full on November 11, 1940; that he sustained the burden of proof that further restraint is double jeopardy.

VIII.

The petitioner filed his preliminary brief and raised two points effecting the indefinite suspension of the execution and enforcement of the judgments after sentence was imposed and advanced and maintained that further restraint was double jeopardy; that in support thereof he cited many cases from decisions from the Supreme Court and appellate Courts; that his preliminary brief in support of these two aforesaid points is on file in Wright vs. Johnston H. C. No. 23647-S.

IX.

That the respondent filed his reply brief and raised allegations that were irrelevant which did not support the issue at bar and avoided citing any case that dealt with the allegations that the trial

court had indefinitely suspended the execution and enforcement of the judgments after sentence was imposed; that the respondent's reply brief is attached hereto as though incorporated herein at length and marked petitioner's Exhibit "I".

X.

That the petitioner filed his closing brief and crossed the respondent's reply brief which is attached hereto as though incorporated herein at length and marked petitioner's Exhibit "J".

XI.

That the petitioner introduced an affidavit as evidence which was made in the trial court twenty-four hours after his [6] first arraignment; that the said affidavit gave notice that petitioner could not safely proceed to trial because of the absence of two witnesses; that the said affidavit gave notice that the interest of the parties would be highly conflicting; that attached hereto marked Exhibit "K" is a certified copy of the said affidavit made to the trial court twenty-four hours after said arraignment.

XII.

That a copy of an order made and entered appointing counsel in case No. 11032 is attached hereto marked Exhibit "L" and by reference made a part hereof as though incorporated herein at length.

XIII.

That a copy of an order made and entered on

August 20, 1942, denying petitioner's application is attached hereto marked Exhibit "M" and by reference made a part hereof as though incorporated herein at length.

XIV.

That a certified copy of the indictment, judgment, commitment and marshal's return is attached hereto marked Exhibit "N" and by reference made a part hereof as though incorporated herein at length. (Case No. 11074.)

XV.

That a certified copy of the indictment, judgment, commitment and marshal's return is attached hereto marked Exhibit "O" and by reference made a part hereof as though incorporated herein at length. (Case No. 11032.)

XVI.

That a copy of an original letter from the Chief Clerk of the Illinois State parole board in relation to petitioner's state parole is attached hereto marked Exhibit "R" and by reference made a part hereof as though incorporated herein at length. [7]

XVII.

That a copy of an original letter from the parole officer located at the State Prison in reference to petitioner's parole from the State prison at which time he was taken into custody by the United States Marshal and conveyed to the Leavenworth Penitentiary, is attached hereto marked Exhibit "S"

and by reference made a part hereof as though incorporated herein at length.

XVIII.

JURISDICTIONAL STATEMENT

Power to issue the writ is Vested by statute in any Judge of the District Court or of a Circuit Court of Appeals, or in a Justice of the Supreme Court, or in the District or Supreme Court. (28 USC Sections 451, 452)

The Statute 28 USC Sec. 452, provides:

“The several justices of the Supreme Court and the several judges of the Circuit Courts of Appeals and of the district Courts, within their respective jurisdiction, shall have power to grant writs of habeas Corpus for the purpose of an inquiry into the cause of restraint of liberty. A Circuit judge shall have the same power to grant writs of habeas Corpus within his Circuit that a district judge has within his district; and the order of the Circuit Judge shall be entered in the record of the district Court of the district wherein the restraint complained of is had. (28 USC Section 452).

In *Ex parte Lamar*, 274 Fed. 160, Circuit Judge Manton, at page 163, said: “But the application for the writ is made here to a Circuit Judge of the Circuit Court of Appeals, and not to the Court. The petition upon which the same is based advances the claim that the petitioner is restrained of his liberty, and that his constitutional rights have been

violated. The power is given to the Justices and judges of the Courts, within their respective jurisdiction, to grant writs of habeas corpus for the purpose of an inquiry into the cause [8] of restraint of liberty. And the application for a writ of habeas corpus under Act Feb. 5, 1867, C. 28 Sec. 1; R. S. Sec. 754 (Comp. St. Sec. 1282), "shall be made to the Court or justice or judge authorized to issue the same by complaint in writing", *ect.* And by the same Act (R. S. Sec. 755 (Comp. St. Sec. 1282)) it is provided that a judge to whom such application is made shall forthwith award a writ of habeas corpus unless it appears from the petition itself that the party is not entitled thereto. While the Circuit Courts have been abolished, there is still the office of Circuit judges as created by the statute. While a Circuit judge may not issue a writ of habeas corpus as one of the members constituting the Circuit Court of Appeals, there is still authority vested in him as a Circuit judge to do so, and there is a mandatory provision of the statute requiring him to issue a writ of habeas corpus if the petition be sufficient." And at page 163, Circuit Judge Manton, said: "When the Circuit Courts were abolished, the statute providing for the right of a judge to grant the writ of habeas corpus was not repealed or amended, thus taking away the power from a Circuit Judge. Circuit Judges have become appellate Judges, and while they have no original jurisdiction as a Court, they have reserved to them the right thus vested by the statute and by the ancient

law." I therefore conclude that I have the power to grant the Writ of habeas corpus. (Vide also Ex parte Craig, 274 F. 177, at page 181.)

XIX.

ARGUMENT

The Sixth Amendment Provides In Parts:

"In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, *by an impartial jury* of the state and district wherein the crime shall have been committed, * * * *and to be informed of the nature and cause of the accusations to be confronted with the witnesses in his [9] favor, and to have the assistance of counsel for his defense*". (Italics added).

The Fifth Amendment Provides In Parts:

* * * "*Nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; * * * nor be deprived of life, liberty or property without due process of law.*" (Italics added).

In *Glasser v. United States*, 62 S. Ct. 457, the Supreme Court speaking through Mr. Justice Murphy, at 641 (1), said: "In conspiracy cases, where the liberal rules of evidence and the wide latitude accorded the prosecution may and sometimes do operate unfairly against an individual, it is especially important that the defendant be given the benefit of the undivided assistance of his counsel without the Courts becoming a party to encumbering that assistance. USCA Const. Amend. 6. That

in prosecutions for conspiracy to defraud the United States, where the trial court, though advised of the possibility that conflicting interests might arise which would diminish an attorney's usefulness to defendant for whom attorney had entered his appearance as associate counsel, appointed attorney as codefendant's counsel, evidence showed that attorney's representation of defendant was not as effective as it might have been had the appointment not been made, and the Court thereby denied defendant his right to have the effective "assistance of counsel" guaranteed by the Sixth Amendment. Cr. Code. Sec. 37, 18 USCA Sec. 88 USCA Const. Amend. 6. An accused's desire to have the benefit of the undivided assistance of counsel of his own choice should be respected. The right of an accused to have the assistance of counsel is too fundamental and absolute to allow courts to indulge in nice calculations concerning the amount of prejudice arising from its denial. The trial judge has the duty of seeing that the trial is conducted with solisitude for the essential rights of the accused, and he should protect the [10] right of an accused to have the assistance of counsel. The assistance of counsel guaranteed by the Sixth Amendment contemplates that such assistance be untrameled and unimpaired by a court order requiring that one lawyer shall simultaneously represent conflicting interests. To preserve the protection of the Bill of Rights for hard-pressed defendants,

every reasonable presumption against a waiver of fundamental rights is indulged. Though an accused may waive the right to the assistance of counsel, whether there is a proper waiver should be clearly determined by the trial court. The guarantee of the Bill of Rights are the protecting bulwarks against the reach of arbitrary power, * * * deemed necessary to insure fundamental human rights of life and liberty. And a federal court cannot constitutionally deprive an accused whose life or liberty is at stake of the assistance of counsel, *Johnson v. Zerbst*, 58 S. Ct. 1019; *Powell v. Alabama*, 53 S. Ct. 55: To preserve against the waiver of fundamental rights, *Aetna Insurance Co. v. Kennedy*, 57 S. Ct. 809; *Ohio Bell Telephone Co. v. Public Utilities Commission*, 57 S. Ct. 724.

In *Avery v. Alabama*, 308 U. S. 444, 447, 60 S. Ct. 322, 84 L. ed. 337, the Supreme Court said: "That the denial of opportunity for appointed counsel to confer, to consult with the accused and to prepare his defense, could convert the appointment of counsel into a sham and nothing more than a formal compliance with the constitution's requirement that an accused be given the assistance of counsel. The constitution's guarantee of assistance of counsel cannot be satisfied by mere formal appointment. That where denial of the constitutional right to assistance of counsel is asserted, its peculiar sacredness demands that we scrupulously review the record.

In *Powell v. Alabama*, 287 U. S. 45, 52, 53 S. Ct. 55, 58, 77 L. ed. 158, 84 A.L.R. 527, in which the Supreme Court said: [11] "That it was the duty of the court * * * to see that they were denied no necessary incidents of a fair trial. That the guaranteed right to the assistance of counsel includes a fair opportunity to an accused to secure counsel of his own choice and to have the effective and substantial aid of counsel, and also decides that the failure of a trial Court to make an effective appointment of counsel is a denial of due process of law.

In *Thomas v. District of Columbia*, 67 App. D. C. 179, 90 F. (2d) 424, in which this Court held: "Under the Sixth Amendment guaranteeing that in Criminal prosecutions the accused shall enjoy the right to have the assistance of counsel and the "due process of law" clause of the Fifth Amendment, "assistance of counsel" means effective assistance. U.S.C.A. Const. Amends. 5, 6.

In *Walleck v. Hudspeth*, 128 F. (2d) 343, at page 345, the Court said: "In reaching prompt disposition of Criminal cases, a defendant, charged with a serious crime, must not be stripped of his right to have sufficient time to advise with counsel and prepare his defense.

In *Wood v. United States*, 128 F. (2d) 265, at page 271, this Court said: "The Constitutional "right of accused" to counsel includes time for adequate preparation and extends to every step in the proceedings against the accused. U.S.C.A. Const. Amend. 5.

In *Evans v. Rives*, 126 F. (2d) 633, at page 636, this Court said: "While an accused may waive the right to counsel, whether there is a proper waiver should be clearly determined by the trial Court, and it would be fitting and appropriate for that determination to appear upon the record." * * *

Petitioner argues that the above and foregoing cases are direct in point with petitioner's allegations that the trial Court denied him the right to have the effective assistance of Counsel for his defense as guaranteed to him [12] under the Sixth Amendment; that in view of the affidavit for a continuance (exhibit K) petitioner was denied compulsory process for obtaining witnesses in his favor as guaranteed to him by the Sixth Amendment; that having been forced to trial on a twenty-four hours notice was without due process of law as guaranteed by the Fifth Amendment; that having been denied a separate trial from the confessed guilty parties forced upon the petitioner a trial that was unfair and unjust and was in violation of the Sixth Amendment which guaranteed petitioner the right to a fair trial before an impartial jury. The petitioner's right to a fair trial would involve each of the above and foregoing elements, see *Sunderland v. United States*, 19 F. (2d) 202, 216, (and cases cited).

Petitioner argues that in view of the trial court's records it clearly shows that the Court failed to make an effective appointment of counsel; that there are other records of exhibits on file in the Clerks

Office of the United States District Court San Francisco and your petitioner has no objections if Your Honor wishes to inspect the records in the case of Cecil Wright, Petitioner vs. James A. Johnston, Warden, *ect.* No. 23647-S.

Petitioner argues that the trial Court indefinitely suspended the execution and enforcement of the judgments after sentence was imposed; that the trial Court failed to fix a definite date for the commencement of the sentence; that the Clerk of the trial Court entered a specification which was no part of the sentence past by the trial judge.

Petitioner argues that the trial Clerk has no power to enter provisions. *Hill v. U. S.*, 298 U. S. 460, 56 S. Ct. 760, 80 L. ed. 1283. (Vide Exhibit "E" page 73).

Petitioner argues that his sentence started at time of commitment and custody thereunder rather than at time of parole by State Authorities. *Smith v. Swope*, (C.C.A. 9th) [13] 91 F. (2d) 260. (Vide Exhibit "A" pages 19-23).

Petitioner argues that he was first indicted by the Federal Court and was under exclusive custody of the United States Marshal and was entitled to serve his federal sentence first. *Albori v. United States*, (C.C.A. 9th) 67 F. (2d) 4. (Vide Exhibit "E" pages 74-77).

Petitioner argues that his state sentence was for not less than one year and no more than natural life and that the state parole board paroled peti-

tioner for the maximum of his sentence. Vide Exhibits "R". "S".

CONCLUSIONS

Petitioner waives his right to appear in this cause and states that the Honorable William Denman may decide the case from the certified records of the trial Court which is attached hereto and set forth in the appendix.

Wherefore, petitioner respectfully prays that his petition for a writ of habeas corpus may be granted and that he be restored to his liberty, and your petitioner will every pray.

Respectfully submitted,

CECIL WRIGHT,

Petitioner.

(Verification)

APPENDIX TO EXHIBITS

Appendix No. 1

EXHIBIT "A"

Petitioner's Certified Application to the United States District for the Northern District of California Southern Division, San Francisco, California. [14]

In the District Court of the United States of
America Within and for the Northern
District of California, Southern
Division Thereof

Civil Action H. C. No. 23647-S

CECIL WRIGHT,

Petitioner,

vs.

JAMES A. JOHNSTON, Warden, United States
Penitentiary, Alcatraz, California,
Respondent.

PETITION FOR WRIT OF HABEAS CORPUS

Comes now the petitioner, Cecil Wright, in propria persona, and states he is unjustly and unlawfully detained and imprisoned in the United States Penitentiary in Alcatraz, San Francisco County, in the State of California, by James A. Johnston, Warden of the said penitentiary, for the reasons that the United States District Court for the Eastern District of Illinois, Danville, in which court said petitioner was indicted, tried, convicted, sentenced, and committed for the term of fifteen years to the said United States Penitentiary at Leavenworth, Kansas, of burglary, larceny, conspiracy and National Motor Vehicle Theft Act, a copy of said indictments, sentences, orders and commitments is attached hereto and made a part hereof, had no jurisdiction to exceed the maximum punishment regulated by statute.

Exhibit "A"—(Continued)

(1) Petitioner states that the said James A. Johnston, Warden, United States Penitentiary, Alcatraz, California, hereinafter referred to as the respondent, and Cecil Wright, petitioner herein, are both within the jurisdiction of this Honorable Court; that said respondent and the United States Penitentiary, Alcatraz, California, are one and the same and within a distance of three miles of the above-entitled Court; that this petitioner is so entitled to be brought before the above-entitled Court at a time not to exceed three days from the time the said respondent fails to show cause why a writ of habeas corpus should not issue as prayed for herein by this petitioner, R. S. Sec. 758 (28 U.S.C. Sec. 458).

(2) This Honorable Court has jurisdiction to issue a writ of habeas corpus for the purpose of an examination of the judgments and commitments; that the purpose of a Writ of habeas corpus is to go back of the commitment for an examination of the records.

(3) Petitioner states that he is restrained of his liberty by virtue of a judgment and sentence which were void on November 11, 1940; that the petitioner was sentenced to terms totalling fifteen years; that the judgments and sentences were imposed by the United States District Court, Eastern District of Illinois, Danville, on September 17, 1930; that attached hereto, marked Exhibit "A" and made a part hereof as though fully set forth herein at length

Exhibit "A"—(Continued)

is a true and certified copy of indictments, judgments and commitments No. 11032 and 11074, hereinafter referred to.

(4) Petitioner states that his conviction and sentence in cases No. 11032 and 11074 was in violation of the Fifth and Sixth Amendments of the United States Constitution; that the petitioner was entitled to have assistance of counsel for his defense; that petitioner was further entitled to have counsel of his own choice; that the trial court forced the appointment of a colored attorney upon the petitioner; that the trial court forced the petitioner to accept appointment of an attorney, which said attorney had been appointed on the same day to represent four other defendants; that said appointment of counsel was only a formal compliance with the Sixth Amendment; that the Sixth Amendment guarantees the accused the right to have assistance of counsel for his defense; that petitioner could not have assistance of counsel for his defense under such circumstances; that petitioner should have been granted an opportunity to employ counsel of his own choice; that without counsel to prepare his case for trial was a violation of the due process of law clause provided for in the Fifth Amendment.

* * * * *

(6) Petitioner states he has earned eighteen hundred (1800) days statutory good time on sentences totalling fifteen years; that within the meaning of the (Act of Congress Public 170—1902) pe-

Exhibit "A"—(Continued)

tioner was eligible for deduction of good time at the rate of ten days a month from date of sentence; that since and after petitioner was sentenced he has lived in accordance with the rules and regulations of the various prisons in which he has been continuously confined since [16] September 17, 1930.

(7) Petitioner states he is being twice punished for the same offenses; that further imprisonment is in violation of Section 88, 313, 315 and 408 of the Code of Laws of the United States; that double jeopardy attaches after serving ten years, one month and twenty-five days from date of sentence.

SUMMARY OF ARGUMENT

Petitioner makes three parts to his argument: First, petitioner was entitled to have assistance of counsel for his defense, this falls within the ratio of *Powell v. Alabama*, 287 U. S. 45, 52, 53 S. Ct. 55, 58, 77 L. ed. 158, 84 A.L.R. 527. Second, petitioner has earned eighteen hundred (1800) days good time, this falls within the (Act of Congress Public 170—1902). Third, petitioner is being twice punished for the same offenses, this falls within the Fifth Amendment of the United States Constitution.

ARGUMENT

I.

(a) Petitioner states he was entitled to assistance of counsel for his defense; that such an ap-

Exhibit "A"—(Continued)

pointment of counsel in this petitioner's case was only a formal compliance with the Sixth Amendment.

The Sixth Amendment provides in part:

"* * * To have compulsory process for obtaining witnesses for his favor, and to have the assistance of counsel for his defense."

The Fifth Amendment provides in parts:

"* * * *Nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law!*" (Italics added)

(b) Petitioner, citing *Powell v. Alabama*, *Supra*, in which the Supreme Court held: "It was the duty of the court * * * to see that they were denied no necessary incident of a fair trial.

(c) Petitioner states that he is unjustly and unlawfully detained and imprisoned and deprived of his liberty by the respondent herein, for the reason that at the time of his said trial in the said State and District of Illinois he request- [17] ed the said United States District Court, District of Illinois, Eastern District, to allow him sufficient time to employ a counsel to prepare his defense, that said court refused the request and in violation of petitioner's rights and over this petitioner's objection said court appointed a counsel (colored

Exhibit "A"—(Continued)

attorney) of its own choosing to represent this petitioner in his aforesaid-mentioned trial; that the same counsel had been appointed to represent four other persons on the same day on trial before a jury; that the said counsel was not capable of defending five persons on a twenty-four hour notice; that at no time did this petitioner acquiesce in said appointment and at no time did he waive, in any manner whatsoever, his rights to counsel as guaranteed to him by the Sixth Amendment to the Constitution of the United States and because thereof this petitioner was denied his rights guaranteed to him under the Sixth Amendment of the Constitution of the United States, as set out above.

(d) Petitioner states that the trial court withheld the said indictments until September 16, 1930; that on that day of the 16th day of September, this petitioner was brought before the trial court; that said trial court appointed a counsel (colored attorney) to represent this petitioner and four other persons on the same date, and said appointment was over the objections of this petitioner.

(e) Petitioner, citing *Powell v. Alabama*, *Supra*, in which the Supreme Court held: "That the guaranteed right to the assistance of counsel includes a fair opportunity to an accused to secure counsel of his own choice and to have the effective and substantial aid of counsel, and also decides that the failure of a trial court to make an effective appointment of counsel is a denial of due process within

Exhibit "A"—(Continued)

the meaning of the Fourteenth Amendment." For same effect as due Process of Law, vide: U.S.C.A. 5.

(f) Petitioner, citing *Johnson v. Zerbst*, 304 U. S. 458, 58, S. Ct. 1019, 82 L. ed. 1461, in which the Supreme Court held: "Under the Sixth Amendment guaranteeing that in criminal prosecutions the accused shall enjoy the right to have assistance of counsel, if an accused is not represented by counsel and has not intelligently and competently waived his constitutional right thereto, the guaranty stands as a judicial bar to a valid conviction. U.S.C.A. Const. Amend. 6.

(g) Petitioner, citing *Thomas v. District of Columbia*, 67 App. D.C. 179, 90 F. (2) 424, in which the court held: "Under the Sixth Amendment guaranteeing that in criminal prosecutions the accused shall enjoy the right to have assistance of counsel and the "due process of law" [18] clause of the Fifth Amendment, "assistance of counsel" means effective assistance. U.S.C.A. Const. Amend. 5, 6.

(h) Petitioner states that in his case the same counsel (colored attorney) was appointed five times on the same day; that the five separate appointments appears in petitioner's exhibit "A";; that the appointment in this case of the petitioner was a mere formal compliance with the Sixth Amendment that an accused be given the assistance of counsel.

(i) Petitioner, citing *Avery v. Alabama*, 308 U.S. 444, 447, 60 S. Ct. 321, 322, 84 L. ed. 337, in

Exhibit "A"—(Continued)

which the Supreme Court held: "But the denial of opportunity for appointed counsel to confer, to consult with the accused and to prepare his defense, could convert the appointment of counsel into a sham and nothing more than a formal compliance with the Constitution's requirement that an accused be given the assistance of counsel. The Constitution's guarantee of assistance of counsel cannot be satisfied by mere formal appointment."

(j) Petitioner's states that the only possible means for assistance of counsel for his defense within the meaning of the Fifth and Sixth Amendment, would have been if the trial court had given this petitioner an opportunity to employ counsel of his own choice; that the appointment of one counsel to represent five defendants and to defend nine indictments on a twenty-four hour's notice was without due process of law within the meaning of the Fifth Amendment; that such an appointment can only be regarded as a sham and nothing more. *Avery v. Alabama, Supra.*

(k) Petitioner further states the guarantee for assistance of counsel for his defense within the meaning of the Sixth Amendment, states clearly in simple words that the accused shall have the assistance of counsel for his defense, and this does not mean that counsel can be appointed to represent this petitioner, if there be more than one appointment for the purpose of defending other defendants on the same day. Here in the petition-

Exhibit "A"—(Continued)

er's case he chose to employ counsel to represent his case and his choice of counsel was that of a man from the white race; that this petitioner did not choose to have a colored man to represent his case, that this petitioner was not given an opportunity to correspond with his mother for the purpose of employing counsel of his own choice; that the trial court forced the case to trial leaving this petitioner without a proper defense counsel. [19]

(l) Petitioner, citing *Avery v. Alabama*, *Supra*, in which the Supreme Court said: "But where denial of the constitutional rights to assistance of counsel is asserted, its peculiar sacredness demands that we scrupulously review the record."

(m) Petitioner, citing *Glasser v. United States*, 62 S. Ct. 457, in which Mr. Murphy, Justice, wrote the opinion, and Justices Stone and Frankfurter dissenting, in which the Supreme Court speaking through Mr. Murphy said: (9) "The assistance of counsel guaranteed by the Sixth Amendment contemplates that such assistance be untrammelled and unimpaired by a court order requiring that one lawyer shall simultaneously represent conflicting interest." (10) "To preserve the protection of the Bill of Rights for hard-pressed defendants, every reasonable presumption against a waiver of fundamental rights in indulged." (11) "The fact that defendant was an attorney was immaterial, in regards to his rights to the assistance of counsel, * * * and through his professional experience might

Exhibit "A"—(Continued)

be a factor in determining if he waived his rights to the assistance of counsel it was by no means conclusive." (12) "The trial judge has the duty of seeing that the trial is conducted with solicitude for the essential rights of the accused and he should protect the right of an accused to have the assistance of counsel." (15) "An accused desire to have the benefit of the undivided assistance of counsel of his own choice should be respected." (16) "The right of an accused to have the assistance of counsel is too fundamental and absolute to allow courts to indulge in nice calculations concerning the amount of prejudice arising from its denial."

(n) Petitioner states it was his desire to have a separate counsel from the confessed guilty parties; that it was also this petitioner's desire to have a lawyer from the white race to represent his case; that this petitioner could have employed counsel of his own choice if the trial court had granted him sufficient time to correspond with his mother; that the petitioner asked for a short continuance to enable him to employ counsel of his own choice; that this petitioner is a white man and it was this petitioner's right to choose a lawyer of the white race.; this petitioner was on trial with four other defendants and it was this petitioner's desire to have his case represented by separate counsel. Vide: *Glasser v. United States*, *Supra*. This petitioner could not have effective assistance of counsel unless he was given counsel to cross-examine the

Exhibit "A"—(Continued)

witnesses; that this petitioner was on trial jointly with several other defendants which said [20] defendants had prior to trial confessed and implicated this petitioner into their wrong doings; the appointed counsel was appointed to defend five defendants on the same date; that the appointment of counsel was to represent five defendants and not to defend either of the five separately; that this petitioner had no counsel to protect his rights as guaranteed by the Sixth Amendment; that this petitioner did object to the said appointment, and over this petitioner's objections the trial court forced the appointment of a colored attorney upon this petitioner; that the said appointed counsel on this petitioner's request filed an affidavit for a continuance so as to give this petitioner an opportunity to employ counsel of his own choosing; that said affidavit was for the purpose of availing this petitioner the right to choice of counsel, as well as subpoenaing vital witnesses for his defense; that this petitioner was forced to trial without counsel for his defense; that the case of *Glasser v. United States, Supra*, is direct controlling in this petitioner's case, and to be considered otherwise would be overruling the Supreme Court's recent decision in *Glasser v. United States, Supra*. The petitioner states that *Powell v. Alabama, Supra*, is direct in point and controlling here in this petitioner's case. That *Johnson v. Zerbst*, 58 S. Ct. 1019, is also

Exhibit "A"—(Continued)

controlling here in this petitioner's case in respect to have the assistance of counsel for his defense.

(o) Petitioner, citing *Walker v. Johnston*, 61, S. Ct. 574, in which the Supreme Court said: "Judicial inquiry into truth and substance of cause of detention of petitioner seeking writ of habeas corpus involves the reception of testimony."

Petitioner, citing *Walker v. Johnston*, *Supra*, in which the Supreme Court held: "If the petition for writ of habeas corpus, the return, and traverse raise substantial issue of facts, it is petitioner's right to have these issues heard and determined in manner prescribed by statute." 28 U.S.C.A. Sections 451, 454, 455, 457.

(p) Petitioner, citing *Walker v. Johnston*, *Supra*, in which the Supreme Court said: "The government contentions that petitioner's allegations were improbable and unbelievable could not serve to deny the petitioner an opportunity to support them by evidence." 28 U.S.C.A. Sections 451, 454, 455, 457.

(q) Petitioner, citing *Walker v. Johnston*, *Supra*, in which the Supreme Court said: "The question whether petitioner carried his burden of proof and showed [21] his right to discharge was to be determined by the whole of the testimony and not by pleadings and affidavits.

(r) Petitioner, citing *Walker v. Johnston*, *Supra*, in which the Supreme Court held: "Where allegations of petition for writ of habeas corpus and traverse and the return and accompanying

Exhibit "A"—(Continued)

presents an issue of facts the proper procedure is to issue writ of habeas corpus have the petitioner produced, and hold a hearing at which evidence is received.

(s) Petitioner states the refusal to permit the accused to prove his defense may prove trivial when the facts are developed. Procedural errors often are. But procedure is the skeleton which forms and supports the whole structure of a case. The lack of a bone mars the symmetry of the body; the parties must be given an opportunity to plead and prove their contentions or else the impression of the judge arising from sources outside the record dominates results. The requirement that allegations must be supported by evidence tested by cross-examination protects against falsehood. The opportunity to assert rights through pleadings and testimony is essential to their successful protection. Infringement of that opportunity is forbidden.

II.

(A) Petitioner states he has earned eighteen hundred (1800) days statutory good time on sentences totalling fifteen years; that if the sentence of September 17, 1930 was a valid judgment of conviction the petitioner would be entitled to good time deduction at the rate of ten days per month; that in this case as shown by the records of the respondent this petitioner has eighteen hundred (1800) days statutory good time to his credit; that

Exhibit "A"—(Continued)

if the sentence of September 17, 1930 is a valid sentence the deduction of good time would be estimated from such date of judgment; that if the sentence was not a valid judgment on the date it was imposed, then it must be void; if its void the petitioner is entitled to his discharge, if it's valid the petitioner is entitled to eighteen hundred (1800) days good time and would have been subject to release on November 11, 1940.

(B) Petitioner, citing *Ex parte U.S.*, 242 U.S., 27, in which the Supreme Court said: "That practice of suspending sentences by trial judges became so prevalent that the government filed an original proceeding in the United States Supreme Court to mandamus a district judge who was engaging in such a practice and the Supreme Court's decree is that proceedings ended for all times the practice. See Page 75, parag. A, enforcement of sentence.

* * * * *

(G) Petitioner states if the judgment and sentence of September 17, 1930, was valid the trial court could not suspend its operation. *Ex parte U.S.*, *Supra*; if the sentence was valid on the date of judgment and sentence its void now by lapse of time; if the judgment and sentence was not valid it must be void and if it's void the petitioner is subject to discharge, if it's not void and valid it's subject to attack by the writ of habeas corpus.

(H) Petitioner states if the commitments be void the writ will issue to inquire into records back

Exhibit "A"—(Continued)

of it; the commitments are void in this instant case and the writ lies to inquire and for an examination of the true cause of this petitioner's detention. Vide: Petitioner's Exhibit "A" commitment.

(I) Petitioner, citing (Public 170—Act of Congress 1902) in which Congress held: "The good time allowance from a prisoner's sentence shall be deducted on a sentence of ten years or more at the rate of ten days a month; that if the prisoner has several sentences to run consecutively the aggregation shall be based on the total of such sentences and the deduction of good time allowed accordingly."

(J) Petitioner states at the time of judgment and sentence in his case September 17, 1930, the Act of Congress, *Supra*, was in effect; that this petitioner was allowed good time deduction on his sentence from the date of judgment and sentence entered upon the records of the court; that the Act of Congress, *Supra*, did not provide for the commencement of a term of imprisonment, and in the ab- [23] sence of statute the time of one's sentence begins to run from the date shown by the judgment and commitment.

(K) Petitioner, citing *In re Jennings*, 118 F. 31 (C.C.Mo.) at Page 479, 480, 481, 482, in which the Court speaking through Thayer, Circuit Judge said: "A United States marshal who has been directed, by a judgment and sentence of the court imposing a term of imprisonment on a defendant

Exhibit "A"—(Continued)

convicted of crime, to convey such defendant to a penitentiary, and deliver him to the keeper, in execution of the sentence, has no authority to surrender the prisoner to the marshal of another district, to be tried for another offense, and his action in so doing is illegal." *Id.*

(L) Petitioner, citing *In re Jennings*, *Supra*, on page 481, in which the court said: "The judgment and sentence in question commanded the marshal to convey the prisoner to Ft. Leavenworth, "without delay, and deliver him to the custody of the keeper of said penitentiary." From what source the marshal derived his authority to act differently, and to disobey the plain mandate of the court whose officer he was, is not disclosed; and such conduct on the part of a ministerial officer is so far subversive of judicial authority and at variance with the established course of judicial procedure as to warrant the belief that no authority or precedent can be found which would justify such action. The law contemplates that, after a prisoner has been tried and sentenced, he will be committed at once to the custody of the prison officials where the sentence is to be executed. He passes by virtue of the sentence into a custody different from that of the court before which he was convicted." *Id.*

(M) Petitioner states *In re Jennings*, *Supra*, the case as cited is controlling in respect to the marshal's failure to obey the mandate of the court. Here in the case of the petitioner's arose a

Exhibit "A"—(Continued)

situation identical with that of the (Jennings Case, Supra), and the court held in the (Jennings Case, Supra), that the marshal's failure to comply with commitment did not postpone the execution of sentence.

(N) Petitioner, citing *Cox v. McConnell* (C.C.A. Ga. 1935) 80 F. (2) 258, in which the court held: "Prisoner held entitled in habeas corpus proceeding to determination of his right to good-time allowance, where allowance would warrant his release if service of sentence began immediately." *Id.*

(O) Petitioner states he has earned eighteen hundred (1800) days statutory [24] good time and is entitled to release by habeas corpus; that the records of the respondent shows the petitioner was given eighteen hundred (1800) days good time which reduced the sentences of fifteen years to ten years and twenty-five days from the date of judgment and commitment; that said petitioner has all times since his imprisonment under the color and authority of the judgment and sentence of the United States District Court, Eastern District of Illinois, Danville, lived and abided by such rules and regulations and in conformity with the said rules of the various penitentiaries in which said petitioner has been continuously confined under said judgment and sentence since September 17, 1930. That this petitioner is entitled to have his rights determined by habeas corpus. *Vide: Cox v. McConnell, Supra.* And the right to have the facts considered by habeas corpus is controlled by stat-

Exhibit "A"—(Continued)

ute. Walker v. Johnston, Supra, Vide: 28 U.S.C.A. Sections 451, 454, 445, 457.

(P) Petitioner, citing Singstack v. Hill (D.C. Pa. 1936), "Warrant of commitment, being final process for carrying judgment into effect, is predicated upon the judgment, must be in substantial accord therewith, and cannot vary or contradict the judgment." Id.

(Q) Petitioner states the commitment in his case contradicts the judgment; the commitment is dated September 17, 1930, and has no such provisions that the execution of the judgment should be delayed. Vide: Petitioner's Exhibit "A" commitment. Vide: In re Jennings, Supra.

(R) Petitioner, citing Ex parte Lyman, 247 Fed. 611, in which the court held: "The time of ones sentence begins to run from the date he is received by the Warden of the penitentiary, *or from the time he is sentenced as shown by the date of such judgment.*" Id. (Italics added)

(S) Petitioner states the judgments in his case shows the date of September 17, 1930; that there is no other date included therein and therefore the case Ex parte Lyman, Supra, is controlling in this petitioner's case. Vide: Petitioner's Exhibit "A" judgment.

(T) Petitioner, citing U.S. v. Dougherty, 299 U.S. 326, 70 L. ed. 309, 46 S. Ct. 156, in which the Supreme Court said: "The sentence should be couched in direct, clear and unambiguous lan-

Exhibit "A"—(Continued)

guage, admitting of no uncertainty in any of its terms." Id. Vide Post: U.S. v. Patterson, 29 F. 775.

(U) Petitioner states a specification entered under petitioner's Exhibit "A" [25] states the federal sentence shall begin upon the *expiration* of a sentence of not less than one year and no more than *natural life*; this the petitioner contends is the true meaning of the provisions entered under petitioner's Exhibit "A" judgment; that this petitioner was under such a State sentence at the time of his conviction in the federal court; that the maximum on this petitioner's State sentence was *natural life*; that this petitioner had only served *fifty-two days* of the State sentence; that the sentence imposed by the State Court has not as yet expired and this petitioner is subject to State Parole for the remainder of his *natural life*; the order of the District Court that the federal sentence shall begin upon the expiration of the aforesaid State sentence is too *Indefinite*; the specification is not only indefinite, it is *ambiguous* in its terms and *senseless* in its meaning; that such a specification is not within the meaning of law and therefore *void*. Vide: U.S. Dougherty, Supra, for the same effect, Vide: U.S. v. Patterson, 29, F. 775. (Italics added)

(V) Petitioner, citing Miller v. Aderhold, 288 U.S. 206, 210, 77 L. ed. 702, 705, 53 S. Ct. 325; Hill v. U. S., 298 U.S. 460, 464, 80 L. ed. 1283, 56 S. Ct. 760, in which the Supreme Court said: "The choice

Exhibit "A"—(Continued)

of pains and penalties, when choice is committed to the discretion of the court, is part of the judicial function. This being so, it must have expression in the sentence, and the sentence is the judgment."

* * * * *

(X) Petitioner, citing *Smith v. Swope* (C.C.A.) 91 F. (2) 260, in which the Circuit Court of Appeals for the Ninth Circuit said: "Where marshal has custody of sentenced prisoner was ordered to deliver him 'forthwith' but held prisoner in County Jail and surrendered him to State Authority, prisoner's service of sentence was deemed to begin at time of commitment and custody thereunder, rather than at date of actual commitment after prisoner's parole by State Authorities." *Id.* [26]

(Y) Petitioner states he was committed to the County Jail from September 14, 1930, until September 18, 1930; that this petitioner was under exclusive custody of United States marshal before and after judgment and sentence; that this petitioner's sentence began on date of sentence and time of commitment and custody thereunder rather than at time of parole by State Authorities. *Vide: Smith, Supra*, and cases therein cited.

(Z) Petitioner, citing *Ex parte Friday*, 43 Fed. 916; *U. S. v. Pile*, 130 U. S., 280; *U. S. v. Malone*, 9 Fed. 897; *U. S. v. Patterson*, 29 Fed. 775, in which the courts held: "After the expiration of the term of court the trial court had no further control over the valid judgment or sentence which it had ren-

Exhibit "A"—(Continued)

dered, and cannot vacate, reform, or change it or pronounce a new sentence."

(Z-2) Petitioner states the trial court declared the judgment and sentence of September 17, 1930, a valid sentence; that this petitioner did not challenge the judgment and sentence until they had expired by lapse of time; that the trial court could not reform the judgment and sentence; that the trial court could not change the judgment and sentence of September 17, 1930, or pronounce a new sentence. Vide: *Ex parte Friday*, *Supra*; *U. S. v. Pile*, *Supra*; *U. S. v. Malone*, *Supra*. For the same effect, Vide: *U. S. v. Patterson*, *Supra*.

III.

(A) Petitioner states that further restraint and detention under said judgment and sentence of September 17, 1930, is double jeopardy within the meaning of the Fifth Amendment of the United States Constitution; that the Fifth Amendment, *Supra*, provides 'nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb'; that this petitioner has been in jeopardy since and at all times after November 11, 1940; that this petitioner is being twice punished for the same offenses within the meaning of the Fifth Amendment of the United States Constitution.

(B) Petitioner, citing 18 U.S.C.A. Sec. 88, Criminal Code 37, in which Congress enacted and has at all times since such enactment declared that such an act to be constitutional, and that any per-

Exhibit "A"—(Continued)

son in violation of this aforesaid act shall be punished not to exceed a maximum sentence of two years imprisonment, and a fine not to exceed ten thousand dollars, or both.

(C) Petitioner, citing 18 U.S.C.A. Sec. 313, in which Congress enacted and has [27] at all times since such enactment declared that such an act to be constitutional, and that any person in violation of this aforesaid act shall be punished not to exceed a maximum sentence of three years imprisonment, and a fine not to exceed one hundred dollars, or both.

(D) Petitioner, citing 18 U.S.C.A. Sec. 315, in which Congress enacted and has at all times since such enactment declared that such an act to be constitutional, and that any person in violation of this aforesaid act shall be punished not to exceed a maximum sentence of five years imprisonment and a fine not to exceed one thousand dollars, or both.

(E) Petitioner, citing 18 U.S.C.A. Sec. 408, in which Congress enacted and has at all times since such enactment declared that such an act to be constitutional, and that any person in violation of this aforesaid act shall be punished not to exceed a maximum sentence of five years imprisonment and a fine not to exceed five thousand dollars, or both.

(F) Petitioner states that Congress intended that this petitioner be punished within the scope of Sections 88, 313, 315 and 408 of Title 18 of the Code of Laws of the United States; that Congress

Exhibit "A"—(Continued)

did not vest any power upon the trial court to increase the sentence of imprisonment; that this petitioner has satisfied the maximum punishment that Congress intended to inflict upon him, and in accordance with (Public—170—Act of Congress) this petitioner's allowance of good time reduced the aggregated sentence of fifteen years to ten years and twenty-five days.

(G) Petitioner states that Sections 88, 313, 315 and 408 of Title 18 of the Code of Laws of the United States in this instant case are void without due process of law within the meaning of the Fifth Amendment of the Constitution of the United States; that further imprisonment is double jeopardy in violation of the jeopardy clause of the Fifth Amendment.

Wherefore, your petitioner prays that a writ of habeas corpus may be granted, directed to the said James A. Johnston, Warden as aforesaid, commanding him to have the body of said Cecil Wright before your Honor at a time and place therein to be specified then and there to do and receive what your Honor shall order concerning said Cecil Wright, together with the time and cause of his detention, and that your petitioner may be restored to his liberty. [28]

Respectfully submitted,
CECIL WRIGHT,
Petitioner.

Dated: March 26, 1942.

Exhibit "A"—(Continued)

State of California

County of San Francisco—ss.

Cecil Wright, being duly sworn, deposes and says: That he is the petitioner in the above-entitled action; that he has read the foregoing petition for a writ of habeas corpus and knows the contents thereof; that the same is true of his own knowledge, except as to those matters which are therein stated on his information and belief, and as to these matters he believes it to be true.

CECIL WRIGHT,

Affiant-Petitioner.

Subscribed and sworn to before me this 26 day of March, 1942.

[Seal]

E. J. MILLER,

Associate Warden,

United States Penitentiary,

Alcatraz, California.

Warden-Associate Warden authorized by the Act of February 11, 1938, to administer oaths. [29]

APPENDIX No. 2

EXHIBIT "B"

ORDER TO SHOW CAUSE [30]

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE

On reading and filing the petition of Cecil Wright, and good cause appearing therefor,

It Is Hereby Ordered that James A. Johnston, Warden of the United States Penitentiary at Alcatraz Island, be and appear before this Court, at the Courtroom of A. F. St. Sure, Judge thereof, in the United States Post Office Building, 7th and Mission Streets, in the City and County of San Francisco, State of California, on the 27th day of April, 1942, at the hour of 10:00 A.M., and then and there [31] show cause, if any he has, why a writ of habeas corpus should not issue as prayed for in the petition filed herein, and

It Is Further Ordered, that a copy of this order and a copy of the said petition for a writ of habeas corpus be served upon the said James A. Johnston not less than five (5) days prior to the date set for hearing thereof, and that the custody of the said Cecil Wright shall not be disturbed pending the final determination of the proceedings on said petition.

Dated: April 6, 1942.

A. F. ST. SURE

Judge of the United States
District Court

Receipt of a copy of the above is hereby admitted
this 6th day of April, 1942.

Assistant United States
Attorney

[Endorsed]: Original filed Apr. 6, 1942. [32]

APPENDIX No. 3

EXHIBIT "C"

PETITIONER'S SUPPLEMENTAL AND
AMENDATORY ALLEGATIONS [33]

[Title of Court and Cause.]

PETITION FOR A WRIT OF HABEAS
CORPUS AD SUBJICIENDUM

To the Honorable Judge A. F. St. Sure.

Now comes the petitioner, Cecil Wright, moves and petitions this Honorable Court to issue a writ of habeas corpus ad subjiciendum for the following reasons, viz.: that said petitioner sued for a writ of habeas corpus against James A. Johnston, Warden, United States Penitentiary, Alcatraz, California, and that upon reading and filing said petition the Honorable A. F. St. Sure made an order to show cause directed at the respondent James A. Johnston, Warden as aforesaid, to appear on April 27, 1942, and to show cause, if any he has, why a writ of habeas corpus should not issue as prayed for in the petition filed in the above-entitled cause.

Exhibit "C"—(Continued)

(A) Petitioner states that if the return has been filed in behalf of the respondent through the office of the United States Attorney, then it is this petitioner's right to a copy of said return for the purpose of traversing the same.

(B) Petitioner states that if no return has been filed in behalf of the said respondent the writ of habeas corpus should issue as prayed for in the said petition filed in the above-entitled and numbered cause.

(C) Petitioner further states if no return was made and entered on April 27, 1942, then this petitioner realleges, reasserts, and reaffirms all the facts, matters, and things set forth in his petition for a writ of habeas corpus on file in the above-named Court entitled Cecil Wright, petitioner, vs. James A. Johnston, Warden, United States Penitentiary, Alcatraz, California, Respondent, No. 23647-S.

(D) Petitioner states that he, the said Cecil Wright, is unlawfully imprisoned, detained and restrained of his liberty in the United States Penitentiary, Alcatraz, California, by color of authority of the United States, and he is in the [34] custody of James A. Johnston, Warden of the above-named penitentiary, located in the jurisdiction of this Court; viz., by color of the authority of a warrant of commitment heretofore issued out of the District Court of the United States for the Eastern District of Illinois, Danville, pursuant to the sentence of said Court upon a judgment of conviction therein

Exhibit "C"—(Continued)

rendered and entered against your petitioner pursuant to his trial therein upon indictments theretofore returned into and filed in said Court charging this petitioner with the commission within the said district and division of penal offenses against the laws of the United States of America, and the said imprisonment, confinement and restraint are made and continued wholly upon the pretended and colorable warrant and authority aforesaid and none other.

(E) That said imprisonment, detention, confinement and restraint are illegal, and that the illegality thereof consist in those facts which have been heretofore recited in the petition above-mentioned, as well as the following facts.

(F) That said application for a writ of habeas corpus No. 23647-S filed on April 6, 1942, in which said application petitioner alleged he was illegally restrained of this liberty by James A. Johnston, Warden, United States Penitentiary, Alcatraz, California. That said application for a writ of habeas corpus set forth the cause of the petitioner's detention, summary of argument and argument supported by citations of law; that said application for a writ of habeas corpus was within the meaning of the United States Constitution, Article I, Section 9; that Article I, Section 9, to the Constitution of the United States refers to the writ of habeas corpus *ad subjiciendum* when a person stands committed in connection with a crime. (*Matter of Kaine*, 14 F. Cas. No. 7597.) [35]

Exhibit "C"—(Continued)

(G) That within the meaning of Article I, Section 9, to the Constitution of the United States, the writ of habeas corpus ad subjiciendum is a writ directed to the person detaining another, and commanding him to produce the body of the prisoner, (or person detained), with the day and cause of his caption and detention, ad faciendum, subjiciendum et recipiendum, to do, submit, to and receive whatsoever the judge or court awarding the writ shall consider in that behalf. 3 Bl. Comm. 131; 3 Steph. Comm. 695. This is the well-known remedy for deliverance from illegal confinement, called by Sir William Blackstone the most celebrated writ in the English law, and the great and efficacious writ in all manner of illegal confinement. 3 Bl. Comm. 129.

(H) That Congress has seen fit to enact into statute certain general rules governing the use and issue of the writ and the procedure thereunder. These are found in Title 28 of the United States Code, Judicial Code and Judiciary, sections 451-466.

(I) That in said application for a writ of habeas corpus No. 23647-S in the matter of Cecil Wright, petitioner, vs. James A. Johnston, Warden, United States Penitentiary, Alcatraz Island, on pages 10-11, paragraphs o, p, q, r, the statutes there cited 28 USCA Sections 451, 454, 455, 457, are hereby amended to read as follows:

(1) R. S. Sec. 751, 28 USC, Sec. 451, 28 USCA Sec. 451

Exhibit "C"—(Continued)

(2) R. S. Sec. 754, 28 USC, Sec. 454, 28 USCA Sec. 454

(3) R. S. Sec. 755, 28 USC, Sec. 455, 28 USCA Sec. 455

(4) R. S. Sec. 757, 28 USC, Sec. 457, 28 USCA Sec. 457; R. S. Sec. 758, 28 USC, Sec. 458, 28 USCA Sec. 458.

(5) R. S. Sec. 759, 28 USC, Sec. 459, 28 USCA Sec. 459

(6) R. S. Sec. 760, 28 USC, Sec. 460, 28 USCA Sec. 460

(7) R. S. Sec. 761, 28 USC, Sec. 461, 28 USCA Sec. 461

(J) That the above statutes of the United States declare that the Supreme Court and the District Courts shall have power to issue writs of habeas corpus; (1) that application [36] for the writ shall be made to the court or justice or judge authorized to issue the same by complaint in writing, under oath, signed by the petitioner, setting forth the facts concerning his detention, in whose custody he is and by virtue of what claim or authority, if known; (2) the court or justice or judge "shall forthwith award a writ of habeas corpus, unless it appears from the petition itself that the party is not entitled thereto." The writ shall be directed to the person in whose custody the petitioner is detained; (3) the person to whom the writ is directed must certify to the court or judge the true cause of detention and, at the same time he makes his return,

Exhibit "C"—(Continued)

bring the body of the party before the judge who granted the writ; (4) when the writ is returned a day is to be set for the hearing, not exceeding five days thereafter, unless the petitioner requests a longer time; (5) the petitioner may deny the facts set forth in the return or may allege any other material facts, under oath; (6) the court or judge "shall proceed in a summary way to determine the facts of the case by hearing the testimony and arguments, and thereupon to dispose of the party as law and justice require."

(K) Petitioner, citing *Walker v. Johnston*, 61, S. Ct. 574, in which the Supreme Court speaking through Mr. Justice Roberts said: "If an issue of fact is presented, the practice appears to have been to issue the writ, have the petitioner produced, and hold a hearing at which evidence is received. *Cundiff v. Nicholson*, 4 Cir., 107 F. (2d) 162; *Hurt v. Zerbst*, 5 Cir. 97 F. (2d) 519; *Brown v. Zerbst*, 5 Cir., 99 F. (2d) 745; *Mothershead v. King*, 8 Cir., 112 F. (2d) 1004; *Sanders v. Allen*, 69 App. D. C. 307, 100 F. (2d) 717; *Clawans v. Rives*, 70 App. D. C. 107, 104 F. (2d) 240, 122 A.L.R. 1436; *United States v. Hiatt*, D.C., 33 F. Supp. 545. This is, we think, the only admissible procedure. Nothing less will satisfy the command of the statute that the judge shall proceed "to de- [37] termine the facts of the case, by hearing the testimony and argument." It is not a question what the ancient practice was at common law or what the practice was

Exhibit "C"—(Continued)

prior to 1867 when the statute from which R. S. Section 761 is derived was adopted by Congress. The question is what the statute requires.

(I) Petitioner, citing *Johnson v. Zerbst*, 304 U. S. 458, 466, 58 S. Ct. 1019, 1024, 82 L. Ed. 1461, in which the Supreme Court speaking through Mr. Justice Black said: "Congress has expanded the rights of a petitioner for a writ of habeas corpus * * *. There being no doubt of the authority of the Congress to thus liberalize the common-law procedure on habeas corpus * * * it results that under the sections cited a prisoner in custody * * * may have a judicial inquiry * * * into the very truth and substance of the causes of his detention * * *." Such a judicial inquiry involves the reception of testimony, as the language of the statute shows.

(J) That an order to show cause is a convenient practice as stated by the Supreme Court in the case of *Walker v. Johnston*, *supra*, which deprives the petitioner of no substantial right, if the petition and traverse are treated, as we think they should be, as together constituting the application for the writ, and the return to the rule as setting up the facts thought to warrant its denial, and if issues of fact emerging from the pleadings are tried as required by the statute.

(K) That said application for a writ of habeas corpus No. 23647-S on file in the above-entitled and numbered cause along with exhibits "A" and "B"

Exhibit "C"—(Continued)

is sufficient on its face for the issuance of said writ; that the said order to show cause made and entered on April 6, 1942, commanding James A. Johnston, Warden aforesaid, to appear on April 27, 1942, and then and there to show cause, if any he has why a writ of habeas corpus should not issue as prayed for in the petition filed herein has been completely ignored by the Assistant United [38] States Attorney acting in behalf of the said respondent; that attached hereto marked exhibit "C" and made a part hereof as though fully set forth herein at length is a true and certified copy of order to show cause made and entered on April 6, 1942.

(L) That said habeas corpus No. 23647-S on file in the above-entitled court and in said application petitioner alleged that he was deprived of the right to have the undivided assistance of counsel is true and petitioner has the right to a hearing to sustain the burden of proof. That petitioner can sustain the burden of proof and an opportunity of this right is controlled by statute. 28 USCA Sections 451, 454, 455, 457, 461.

(M) Petitioner, citing *Walker v. Johnston*, *supra*, in which the Supreme Court speaking through Mr. Justice Roberts said: "Where petitioner sought writ of habeas corpus on ground that he had been deprived of constitutional right to assistance of counsel for his defense, question whether petitioner carried his burden of proof and showed his right to discharge was to be determined by the

Exhibit "C"—(Continued)

whole of the testimony and not by pleadings and affidavits. 28 USCA Sections 451, 454, 455, 457, 461; USCA Const. Amend. 6.

(N) That if petitioner sustains the burden of proof that he was deprived of the undivided assistance of counsel, then said petitioner is entitled to his discharge without prejudice to the right of the United States to take any lawful measure to have the petitioner sentenced in accordance with law upon the verdict against him; that petitioner presented to this court certified copies of the indictments, judgments and commitments in cases No. 11032 and 11074 and marked the same as exhibit "A" and "B".

(O) That the facts alleged in the said application H. C. No. 23647-S are true and supported by the trial court's own records; that nothing has been done to deny petitioner's [39] allegations and the application along with the exhibits attached thereto should be taken as confessed and petitioner discharged accordingly. Vide *In re Jennings*, C. C. Mo. 118 F. P. 479, 482.

(P) That the said application H. C. No. 23647-S on file in the above-entitled court together with this application constituting a writ of habeas corpus ad subjiciendum is sufficient for the issuance of said writ; that no return has been filed in and on behalf of said respondent and therefore petitioner is entitled to a hearing for the determination of his right to discharge by habeas corpus.

Exhibit "C"—(Continued)

Wherefore, your petitioner prays that a writ of habeas corpus ad subjiciendum may be granted, directed to the said James A. Johnston, Warden as aforesaid, commanding him to have the body of said Cecil Wright before your Honor at a time and place therein to be specified then and there to do and receive what your Honor shall order concerning said Cecil Wright, together with the time and cause of his detention, and that your petitioner may be restored to his liberty.

Respectfully submitted,
CECIL WRIGHT,
Petitioner

Dated: May 8, 1942.

(Verification.) [40]

[Title of Court and Cause.]

ORDER TO SHOW CAUSE

On reading and filing the petition of Cecil Wright, and good cause appearing therefor,

It Is Hereby Ordered that James A. Johnston, Warden of the United States Penitentiary at Alcatraz Island, be and appear before this Court, at the Courtroom of A. F. St. Sure, Judge thereof, in the United States Post Office Building, 7th and Mission Streets, in the City and County of San

Exhibit "C"—(Continued)

Francisco, State of California, on the 27th day of April, 1942, at the hour of 10:00 A.M., and then and there show cause, if any he has, why a writ of habeas corpus should not issue as prayed for in the petition filed herein, and

It Is Further Ordered, that a copy of this order and a copy of the said petition for a writ of habeas corpus be served upon the said James A. Johnston not less than five (5) days prior to the date set for hearing thereof, and that the custody of the said Cecil Wright shall not be disturbed pending the final determination of the proceedings on said petition.

Dated: April 6, 1942.

A. F. ST. SURE

Judge of the United States
District Court [41]

APPENDIX No. 4

EXHIBIT "D"

RESPONDENT'S RETURN TO ORDER TO
SHOW CAUSE WITH CERTIFIED
COPIES OF COMMITMENTS IN CASES
NO. 11032 AND 11074, AND ECT. [42]

[Title of District Court and Cause.]

RETURN TO ORDER TO SHOW CAUSE

Comes now James A. Johnston, Warden of the United States Penitentiary, Alcatraz Island, California, through Frank J. Hennessy, United States Attorney for the Northern District of California, and for return to the Order to Show Cause heretofore issued herein, shows as follows:

I.

That the person hereinafter termed "the prisoner", on whose behalf the petition for writ of habeas corpus was filed, is detained by the respondent as Warden of the United States Penitentiary at Alcatraz Island, California, under and by virtue of the judgments and sentences duly issued by the District Court of the United States for the [43] Eastern District of Illinois in cases numbered 11032 and 11074 and transfer order issued in Washington, D. C. by Frank Loveland, Acting Assistant Director of the Bureau of Prisons of the Department of Justice on July 18, 1941;

II.

That this is the third petition for writ of habeas corpus filed by the prisoner, two previous petitions having been filed before this Court in cases numbered 23581-S and 23611-S, both of said petitions having been denied by the Court; that with the exception of the allegation in the petition that petitioner was denied his effective right to assistance of counsel, the questions raised in his present petition are the same as those raised in the two previous above-numbered petitions;

III.

That respondent is informed and believes that petitioner's right to assistance of counsel was not denied him at the time of his appearance before the District Court of the United States for the Eastern District of Illinois (the trial court), and that the prisoner was in fact represented by counsel at the time of his conviction and sentence;

IV.

That attached hereto and incorporated herein as part of this Return are copies of the following: Commitment in said Criminal Cause No. 11032; Commitment in said Criminal Cause No. 11074; Transfer Order issued as aforesaid, and Record of Court Commitment of the Department of Justice, Penal and Correctional Institutions, United States Peniten- [44] tiary, Alcatraz, California, in the case of Cecil Wright, No. 579-AZ.

Wherefore respondent prays that the petition for writ of habeas corpus be denied and that the order to show cause heretofore issued be discharged.

Dated: May 15, 1942.

FRANK J. HENNESSY,
United States Attorney. [45]

United States of America
Eastern District of Illinois

The President of the United States

To the Marshal of the Eastern District of Illinois—Greeting:

Whereas, at the September Term of the District Court of the United States for said Eastern District of Illinois, begun and held on the 1st day of September A. D. 1930, at the City of Danville, in said District, to wit:

On the 17th day of September A. D. 1930, Cecil Wright alias Tuck Wright indicted for Violation National Motor Vehicle Theft Act having plead guilty was sentenced to be imprisoned in the United States Penitentiary, at Leavenworth, Kans., for the period of five years, said sentence to run and be served consecutively with the sentence imposed in case No. 11032 in this court.

You are, therefore, commanded to take the said Cecil Wright alias Tuck Wright and him convey as soon as possible to the United States Penitentiary, at Leavenworth, Kans., there to be impris-

oned in pursuance of the said sentence, and to deliver to the Warden of said Penitentiary a duly certified copy of said sentence, under the seal of the said court.

Hereof Fail Not, and of this Writ and your doings thereon make due return.

Witness, The Honorable Walter C. Lidley, Judge of said Court, at Danville, in the District aforesaid, this 17th day of September, A. D. 1930.

(Signed) D. W. REED,
Clerk

District Court of United States
Eastern District Illinois

No. 11074

THE UNITED STATES

vs.

CECIL WRIGHT

I hereby certify that the within named Cecil Wright, alias Tuck Wright has been confined in the Illinois State Penitentiary from the date of sentence to October 31, 1939.

(Signed) WILLIAM RYAN,
U. S. Marshal

United States of America
Eastern District of Illinois—ss.

I have executed the within writ by transporting and delivering the within named defendant Cecil

Wright alias Tuck Wright to the Warden of United States Penitentiary, at Leavenworth, Kans., as I am herein commanded, this 1st day of November, A. D. 1939.

(Signed) WILLIAM RYAN,
U. S. Marshal

A True Copy:

W. F. DORINGTON
Record Clerk
USP., Alcatraz, Calif. [46]

United States of America
Eastern District of Illinois

The President of the United States

To the Marshal of the Eastern District of Illinois—Greeting:

Whereas, at the September Term of the District Court of the United States for said Eastern District of Illinois, begun and held on the 1st day of September, A. D. 1930, at the City of Danville, in said District, to wit:

On the 17th day of September, A. D. 1930, Robert Raymond, Carl Sanders, Joseph Hartman and Tuck Wright indicted for Violation of the Postal Laws having been found guilty were each sentenced to be imprisoned in the United States Penitentiary, at Leavenworth, Kans., for the period of ten years, from the date of the delivery of the said defendant to the Keeper or Warden of said Penitentiary, and to pay a fine to the United States in the sum of

\$10,000, said sentences to begin upon the expiration of the sentences which said defendants are now serving in the Southern Illinois Penitentiary.

You are, therefore, commanded to take the said Robert Raymond, Carl Sanders, Joseph Hartman and Tuck Wright and them convey as soon as possible to the said United States Penitentiary, at Leavenworth, Kans., there to be imprisoned in pursuance of the said sentence, and to deliver to the Warden of said Penitentiary a duly certified copy of said sentence, under the seal of the said court.

Hereof Fail Not, and of this Writ and your doings thereon make due return.

Witness, The Honorable Walter C. Lindsey, Judge of said Court, at Danville, in the District aforesaid, this 17th day of September, A. D. 1930.

(Signed) D. W. REED,
Clerk

District Court of United States
Eastern District of Illinois

No. 11032

THE UNITED STATES

vs.

ROBERT RAYMOND, CARL SANDERS, JOSEPH HARTMAN AND TUCK WRIGHT.

I hereby certify that the within named Tuck Wright has been confined in the Southern Illinois

Penitentiary from date of sentence to October 31, 1939.

(Discharged from Illinois State Penitentiary, October 31, 1939)

(Signed) WILLIAM RYAN,
U. S. Marshal

United States of America
Eastern District of Illinois—ss.

I have executed the within writ by transporting and delivering the within-named defendant Carl Sanders & Joseph Hartman to the Warden of United States Penitentiary, at Leavenworth, Kans., as I am herein commanded, this 26 day of June, A. D. 1934.

ARTHUR M. BURKE,
U. S. Marshal
(Signed) HOWARD ROSS,
Deputy.

I have executed the within writ by transporting and delivering the within named Robert Raymond to the Warden of United States Penitentiary, at Leavenworth, Kansas, as I am herein commanded, this 13th day of November, A. D. 1934.

WILLIAM RYAN,
U. S. Marshal
By (Signed) JERRY BAXTER,
Deputy.

A True Copy

W. F. DORINGTON
Record Clerk,
USP., Alcatraz, Calif. [47]

Administrative Form No. 66

November 1938

Department of Justice

Washington

(Seal)

July 18, 1941

To the Warden, U. S. Penitentiary, Leavenworth,
Kansas

Whereas, in accordance with the authority contained in title 18, sections 744b and 753f, U. S. Code, the Attorney General by the Director of the Bureau of Prisons has ordered the transfer of Cecil Wright, #55980 from the U. S. Penitentiary, Leavenworth, Kansas to the U. S. Penitentiary, Alcatraz, California

Now Therefore, you, the above-named officer, are hereby authorized and directed to execute this order by causing the removal of said prisoner, together with the original writ of commitment and other official papers as above ordered and to incur the necessary expense and include it in your regular accounts.

And you, the warden, superintendent, or official in charge of the institution in which the prisoner is now confined, are hereby authorized to deliver the prisoner in accordance with the above order; and you, the warden, superintendent, or official in charge of the institution to which the transfer has been ordered, are hereby authorized and directed

to receive the said prisoner into your custody and him to safely keep until the expiration of his sentence or until he is otherwise discharged according to law.

By direction of the Attorney General

(Signed) FRANK LOVELAND,
Acting Assistant Director,
Bureau of Prisons.

Safer custody

A True Copy:

W. F. DORINGTON,
Record Clerk,
USP., Alcatraz, Calif.

Original.—To be left at institution to which prisoner is transferred. [48]

Record Form No. 1
(Revised Feb., 1936)

Original for Central File

RECORD OF COURT COMMITMENT

Department of Justice
Penal and Correctional Institutions
United States Penitentiary
Alcatraz, California

Inst. Name—Wright, Cecil. No.—579-AZ.

Alias—Tuck Wright. Date of Birth: 9-6-07.

Color—White. Age—34.

True Name—Inst. Name. Name and number of

prior commitments to Fed. Inst.—Same case & #55980—Leavenworth.

Offense—P. O. B. & E. Theft Consp., & Dyer Act.

District—Ed.—Illinois, Danville.

Sentence—15 Years. Fine—\$10,000.00. Committed—Yes.

Sentenced—September 17, 1930. When arrested—September 12, 1930.

Committed to Fed. Inst.—November 1, 1939. Where arrested—Pen. Menard Illinois.

Note: Sentence begins date of discharge from Illinois State Penitentiary, October 31, 1939. Residence—East Chicago, Indiana.

Eligible for Parole—October 30, 1944. Time in jail before trial—Since arrest.

Eligible for conditional release with good time—November 25, 1949. Rate per mo. good time—10. Total good time possible—1800 days plus.

Eligible for con. rel. with extra good time—~~Oct. 6, 1949~~—11-5-49. 50 days Ind. good time earned at USP., Leav.

Forfeited good time—October 17, 1941. Amount forfeited—30 days industrial G. T.

Expires full time—October 30, 1954.

Former Com. on Sentence to Other Institutions—No. 9492—15386—State Penitentiary, Menard, Illinois; No. 6485, State Penitentiary, Joliet, Illinois; No. 5751, State Reformatory, Pontiac, Illinois.

Persons to be notified in case of serious illness

or death: Name—Mrs. Dora Wright. Relation to prisoner—Mother. Address—7050 Osborne Street, East Chicago, Indiana. Telephone—.

Received at USP Alcatraz, July 23, 1941, by transfer from USP Leavenworth.

[Followed by form not filled in].

A True Copy.

W. F. DORINGTON,
Record Clerk. [49]

APPENDIX NO. 5

EXHIBIT "E"

PETITIONER'S TRAVERSE TO RETURN ON ORDER TO SHOW CAUSE [50]

[Title of District Court and Cause.]

TRAVERSE TO RETURN ON ORDER TO SHOW CAUSE

To: The Honorable A. F. St. Sure, United States District Judge, For The Northern District of California.

Now comes the petitioner, Cecil Wright, and by way of traverse and answers to the return heretofore filed by the respondent, represents as follows:

I.

That said petitioner re-alleges, reasserts and re-

Exhibit "E" (Continued)

affirms all the facts, matters and things set forth in his petition for a writ of habeas corpus.

II.

Petitioner, traversing respondent's return to order to show cause at page 2, paragraph 2, represents and shows:

(A) The fact that two previous petitions were filed is immaterial and has no effect on this case at bar.

(B) Petitioner, citing *Albori v. United States*, (C.C.A. Cal., 1933) 67 F. (2d) 4, in which the Circuit Court of Appeals for the Ninth Circuit held: "Res judicata does not apply in habeas corpus proceedings." In view of *Albori v. United States*, *Supra*, and in view of the fact that the case at bar is not identical with the two previous petitions, respondent's contentions that petitioner has raised questions in the present petition that were alleged in the two previous petitions is immaterial.

III.

Petitioner, traversing respondent's return to order to show cause at page [51] 2, paragraph 3, represents and shows:

(C) That petitioner's right to have the undivided assistance of counsel for his defense should have been respected. *Glasser v. United States*, *Supra*, 62 S. Ct. 457. The trial court denied the petitioner the right to employ counsel of his own choice

Exhibit "E" (Continued)

and over this petitioner's objections the trial court appointed counsel of its own choosing in the petitioner's aforesaid mentioned trial.

(D) The petitioner was on trial jointly with several other defendants which said defendants had prior to trial confessed and implicated this petitioner into their wrong-doings; this petitioner requested the undivided assistance of counsel for his defense and such a request was made by affidavit and filed in the trial court on the 17th day of September, 1930. This petitioner's interest was conflicting with that of his co-defendants and a cross-examination of the witnesses could not properly be conducted by the appointed counsel.

(E) Petitioner, citing *Glasser v. United States*, Supra, 62 S. Ct. 457, in which case the Supreme Court speaking through Mr. Justice Murphy, said: "The assistance of counsel guaranteed by the Sixth Amendment *contemplates that such assistance be untrammelled and unimpaired by a court order requiring that one lawyer shall simultaneously represent conflicting interests.*" "To preserve the protection of the Bill of Rights for hard-pressed defendants, every reasonable presumption against a waiver of fundamental rights is indulged. Though an accused may waive the right to the assistance of counsel, *whether there is a proper waiver should be clearly determined by the trial court. An accused's desire to have the benefit of the undivided assistance of counsel of his own choice should be respected. The right of an accused to have the as-*

Exhibit "E" (Continued)

sistance of counsel is too fundamental and absolute to allow courts to indulge in nice calculations concerning the amount of prejudice arising from its denial. The trial judge has the duty of *seeing that the trial is conducted with solicitude for the essential rights of the accused* and he should protect the right of an accused to have the assistance of counsel. *The guarantee of the Bill of Rights are the protecting bulwarks against the reach of arbitrary power, * * * deemed necessary to insure fundamental human rights of life and liberty.* And a federal court cannot constitutionally deprive an accused whose life or liberty is at stake of the assistance of counsel, Johnson v. Zerbst, 58 S. Ct. 1019; Powell v. Alabama, 53 S. Ct. 55: "To preserve * * * against the [52] waiver of fundamental rights, Aetna Insurance Co. v. Kennedy, 57 S. Ct. 809; Ohio Bell Telephone Co. v. Public Utilities Commission, 57 S. Ct. 724." (Italics added.)

(F) The petitioner asserts that this case at bar is identical with the case of Glasser v. United States, Supra. The case of Glasser v. United States, Supra, is direct controlling here in the petitioner's case.

(G) Petitioner, citing Walker v. Johnston, 61 S. Ct. 574, in which the Supreme Court held: "If the petition for writ of habeas corpus, the return, and traverse raise substantial issue of facts, it is petitioner's right to have these issues heard and determined in manner prescribed by statute." 28 U.S.C.A. Sections 451, et. seq.

(H) The fact that the respondent states that he

Exhibit "E" (Continued)

is informed and believes that petitioner's right to assistance of counsel was not denied him could not serve to deny the petitioner an opportunity to support his allegations by evidence. 28 U.S.C.A. Sections 451, et seq.

(I) Petitioner, citing Walker v| Johnston, Supra, in which the Supreme Court said: "The government contentions that petitioner's allegations were improbable and unbelievable could not serve to deny the petitioner an opportunity to support them by evidence." 28 U.S.C.A. Sections 451 et seq.

(J) The petitioner conceded in his petition for a writ of habeas corpus the fact that the trial court appointed counsel, but that said appointment was over the objections of this petitioner. That the trial court refused this petitioner an opportunity to employ counsel of his own choice and forced the petitioner to trial without proper defense counsel. That petitioner requested the trial court to allow him sufficient time to employ counsel and to prepare his case for trial. The trial court denied this petitioner's request and over this petitioner's objections the trial court appointed a colored attorney to represent this petitioner in his aforesaid mentioned trial. That the trial court forced upon the petitioner a trial that was unfair and unjust.

(K) Petitioner, citing Powell v. Alabama, Supra, in which the Supreme Court held: "*That the guaranteed right to the assistance of counsel includes a fair opportunity to an accused to secure counsel of his own choice and to have the effective*

Exhibit "E" (Continued)

and substantial aid of counsel, and also decides that the failure of a trial court to make an effective appointment of counsel is a denial of due process [53] within the meaning of the Fourteenth Amendment." For same effect as due process of law, *Vide U.S.C.A. Amend. 5.* (Italics added.)

(L) Petitioner, citing *Evans v. Rives*, 126 F. (2d) 633 (decided February 21, 1942), in which the court speaking through Mr. Justice Stephens, said: "The duty upon a court of according an accused constitutional right to assistance of counsel is positive and affirmative and must not be ignored. U.S. C.A. Const. Amend. 6. *"The Sixth Amendment withholds from federal courts, in all criminal proceedings, the power and authority to deprive an accused of his life or liberty unless he has or waives the assistance of counsel.* *Johnson v. Zerbst*, 304 U.S. 458, 58 S. Ct. 1019, 82 L. Ed. 1461. *While an accused may waive the right to counsel, whether there is a proper waiver should be clearly determined by the trial court, and it would be fitting and appropriate for that determination to appear upon the record.* (Italics added.) (304 U.S. at pages 462, 463, 58 S. Ct. at page 1022, 82 L. Ed. 1461.)

IV.

Petitioner, further traversing respondent's return to order to show cause at page 2, paragraph 4, represents and shows:

(M) The two commitments No. 11032 and No. 11074 attached to respondent's return and made a

Exhibit "E" (Continued)

part thereof were issued pursuant to the judgment and sentence entered upon the records of the trial court September 17, 1930. The petitioner refers this court to commitment No. 11032, and asks the court to observe the fact that the commitment has never been executed in so far as this petitioner is concerned. That the marshal has certified that the petitioner was confined in the Southern Illinois State Penitentiary from date of sentence to October 31, 1939. That commitment No. 11032 has not been executed against this petitioner by the marshal from the Eastern District of Illinois. The order of commitment No. 11032 commanded the marshal to take the petitioner and convey as soon as possible to the said United States Penitentiary, at Leavenworth, Kansas, there to be imprisoned in pursuance of the said sentence * * *. No mentioning was made that the petitioner was to be taken back to the state prison from where he came. That commitment No. 11032 has been reconstructed by the Clerk of the court to read in such a manner that would cover the marshal's failure to execute the mandate of the court. That the trial judge in pronouncing judgment and sentence did not mention that the [54] federal sentence would start upon the expiration of the sentence the petitioner was serving in the State Penitentiary. In fact, the trial judge was not aware that the petitioner was under service of a state sentence of not less than one year and no more than natural life. Had the trial judge been

Exhibit "E" (Continued)

familiar with petitioner's state sentence he would have no doubt deferred sentence in the federal court, or entered some specific provision that would not have been ambiguous and uncertain. The fact that the state sentence was for not less than one year and no more than natural life and in view of the fact petitioner was only paroled by State Board and subject to the State for the remaining of his natural life is sufficient to show that the state sentence has not been satisfied. The provisions inserted into the commitment and judgment is ambiguous and uncertain. That such provisions inserted by Clerk of Court are void, and even if entered upon the instructions of the trial judge the provisions would still be void for pronounced uncertainty.

(N) Petitioner, citing *Hill v. United States*, 298 U.S. 460, 56 S. Ct. 760, 80 L. Ed. 1283, in which the Supreme Court speaking through Mr. Justice Cardoza, held the commitment void, saying: "A Warrant of Commitment departing in matter of substance from the judgment back of it is void. *Boyd v. Archer* (C.C.A. 9th) 42 F. (2d) 43, 70 A.L.R. 1507; *Wagner v. United States* (C.C.A. 6th) 3 F. (2d) 864. Being void and not merely irregular, its nullity may be established upon a writ of habeas corpus. *People ex rel. Trainor v. Baker*, 89 N.Y. 460; *Boyd v. Archer*, *Supra*; *McNally v. Hill*, 293 U. S. 131, 79 L. Ed. 238, 55 S. Ct. 24. 'The prisoner is detained, not by virtue of the warrant of commitment, but on account of the judgment and

Exhibit "E" (Continued)

sentence.' *Riddle v. Shirley*, 16 F. (2d) 566; *Howard v. U.S.*, 75 F. 986, 989, 34 L.R.A. 509. If the judgment and sentence do not authorize his detention, no 'mittimus' will avail to make detention lawful. In *Hill v. United States*, *supra*, the following questions were certified to the Supreme Court for answer:

First, was the provisions inserted by the Clerk, (for nonpayment of fine) and always just orally understood by Clerk, (a) void? or (b) merely irregular?

Second, was the petition to District Court to correct the commitment, a final judgment until reversed by appropriate proceeding for review?

Third, will habeas corpus lie in one court to correct the commitment of another court where they were made certainly by the Clerk, but was not the sentence orally pronounced by the Court? Answer to questions:

First—The provisions by Clerk is void.

Second—No.

Third—Yes. [55]

(O) The petitioner was first in custody of the federal government and confined in the Vermilion County Jail under exclusive control of the United States marshal of the Eastern District of Illinois; that the federal government first took criminal jurisdiction over the petitioner under indictments returned at the May, 1930, term of court; that petitioner was arrested by the federal government and placed in the Vermilion County Jail and held there-

Exhibit "E" (Continued)

in from June 19, 1930, to July 23, 1930; that on request of the State Sheriff the United States marshal loaned the petitioner to the State Court for trial; that the State Court having returned an indictment at the July, 1930, term of court did not have exclusive control over the petitioner; that the marshal loaned the petitioner to the State Sheriff on July 23, 1930, for the purpose of being tried and not for the purpose of serving time in the State Prison; the State Court convicted the petitioner and immediately imprisoned the petitioner in the Southern Illinois State Penitentiary; that fifty-two (52) days after petitioner is confined in the State Prison, the marshal from the Eastern District of Illinois arrested petitioner a second time; that the State authorities loaned the petitioner back to the marshal and after the petitioner's conviction he was confined to the Vermilion County Jail until September 18, 1930; that petitioner was surrendered back to the State authorities for service of his State sentence of not less than one year and no more than natural life; that in 1935 while still under service of the State sentence petitioner wrote a letter to the trial judge seeking advice as to the proper proceedings necessary to set aside the federal sentence; the trial judge in reply stated: "I am only permitted to give advice to the Attorney-General and the President of the United States. I lost jurisdiction over your case at the expiration of the term of court in which you were convicted and especially after your sentence has begun. Your only remedy is

Exhibit "E" (Continued)

to apply to the President for executive clemency." On receiving the trial judge's letter petitioner immediately applied for executive clemency, but due to certain circumstances in the State Penitentiary petitioner did not complete his application.

(P) Petitioner, citing *Albori v. United States*, 67 F. (2d) 4, in which the Circuit Court of Appeals for the Ninth Circuit speaking through Mr. Sawtelle, Circuit Judge, said: "Federal Court, having first taken jurisdiction of Criminal case, was entitled, as against state court subsequently acquiring jurisdiction, [56] to have its sentence first executed."

(Q) The fact that the federal court first acquired jurisdiction over the person of the petitioner gave the federal court exclusive custody of petitioner and the right to have the federal sentence first executed; the federal marshal cannot loan the petitioner to a foreign sovereignty for the purpose of serving time; that the marshal could have loaned the petitioner for the purpose of a state trial, but the state could not imprison the petitioner in the State Penitentiary after conviction having only requested the petitioner's person temporarily.

(R) Petitioner, citing *Albori vs. United States*, *Supra*, in which the court said: "The federal court having first taken jurisdiction of the person of Albori, no doubt the United States had a lawful right to insist that the sentence imposed by its own court should be first executed." *Albori v. Sittel*, (C.C.A.) 44 F. (2d) 312, 313.

Exhibit "E" (Continued)

(S) The petitioner alleges that the State Parole Board released him on parole and that petitioner is still subject to the State of Illinois until discharged by the Department of Public Welfare; that petitioner was informed by the Board of Paroles that after his release from the federal Penitentiary it will be necessary for this petitioner to serve out his parole under the judgment of conviction by the State Court.

(T) The petitioner alleges if this court holds that the trial court could order the federal sentence to start upon the expiration of the state sentence, then it is necessary for this court to rule that the federal sentence has not as yet started; the fact that the petitioner was paroled and is still under the judgment of the state court will determine the question involved in respect as to when the federal sentence was to begin; it would seem that the sovereignty first acquiring exclusive control of the petitioner's person would retain its exclusively until the judgment is satisfied in full; since the jurisdiction of the petitioner's person first went to the federal government it was the petitioner's right to serve the federal sentence first; to hold otherwise would be establishing a law that a prisoner could be loaned to any state or federal prison for the purpose of serving time.

(U) Petitioner motions the court to strike from the respondent's return to order to show cause the following papers: (1) Record of Court Commitment taken from the [57] respondent's control file

Exhibit "E" (Continued)

jacket; (2) Commitment No. 11032 which has never been executed against this petitioner by the marshal of the Eastern District of Illinois.

Prayer

Wherefore, your petitioner respectfully prays that the writ of habeas corpus be issued and that your petitioner have such other and further relief or remedy in the premises as to the court may seem appropriate.

Dated: Alcatraz, California, May 22, 1942.

CECIL WRIGHT,

Petitioner, Per sec.

State of California

County of San Francisco—ss.

Cecil Wright, being first duly sworn, deposes and says: That he is the petitioner named in the foregoing traverse to return on order to show cause; that he has read said traverse and knows the contents thereof; that the same is true of his own knowledge, except as to those matters which are therein stated on his information and belief, and as to these matters he believes it to be true.

CECIL WRIGHT,

Affiant-Petitioner, Per sec.

Subscribed and sworn to before me this 22nd day of May, 1942.

[Seal] E. J. MILLER,

Associate Warden United States Penitentiary, Alcatraz, California.

Warden-Associate Warden authorized by the Act of February 11, 1938, to administer oaths. [58]

APPENDIX No. 6

EXHIBIT "F"

RETURN TO WRIT OF HABEAS
CORPUS [59]

[Title of District Court and Cause.]

RETURN TO WRIT OF HABEAS CORPUS

Comes now James A. Johnston, Warden of the United States Penitentiary, Alcatraz Island, California, and for return to the writ of habeas corpus heretofore issued herein, shows as follows:

I.

That the person hereinafter termed "the prisoner", on whose behalf the petition for writ of habeas corpus was filed, is detained by the respondent as Warden of the United States Penitentiary at Alcatraz Island, California, under and by virtue of the judgments and sentences duly issued by the District Court of the United States for the Eastern District of Illinois in cases numbered 11032 and [60] 11074 and transfer order issued in Washington, D. C., by Frank Loveland, Acting Assistant Director of the Bureau of Prisons of the Department of Justice on July 18, 1941;

II.

That this is the third petition for writ of habeas corpus filed by the prisoner, two previous petitions having been filed before this Court in cases num-

bered 23581-S and 23611-S, both of said petitions having been denied by the Court; that with the exception of the allegation in the petition that petitioner was denied his effective right to assistance of counsel, the questions raised in his present petition are the same as those raised in the two previous above-numbered petitions;

III.

That respondent is informed and believes that petitioner's right to assistance of counsel was not denied him at the time of his appearance before the District Court of the United States for the Eastern District of Illinois (the trial court), and that the prisoner was in fact represented by counsel at the time of his conviction and sentence;

IV.

That the Return to Order to Show Cause heretofore filed herein is hereby referred to and incorporated herein as though set forth in full.

Wherefore respondent prays that the petition for writ of habeas corpus be denied and that the writ heretofore [61] issued be discharged.

Dated: May 28, 1942.

JAMES A. JOHNSTON,

Warden, United States Penitentiary, Alcatraz Island,
California. [62]

APPENDIX No. 7

EXHIBIT "G"

PETITIONER'S MOTION FOR WITH-
DRAWAL OF COUNSEL [63]

[Title of District Court and Cause.]

MOTION FOR WITHDRAWAL OF COUNSEL

To the Honorable A. F. St. Sure:

Now comes Cecil Wright, the petitioner in the above-entitled cause, and moves that the order of appointment of counsel made and entered on May 29, 1942, be vacated upon the following grounds:

1. That petitioner does not choose to have depositions taken in his behalf.

2. That petitioner requested the said appointment of counsel for the purpose of having depositions taken from the trial court, but decides that his testimony and certified copies of the trial court's records is sufficient to support his allegations that he was denied the effective assistance of counsel for his defense.

3. That petitioner will file a brief in support of point two and three, and the respondent's attorney may have the required time to present his reply brief.

Wherefore, petitioner prays that the order ap-

pointing counsel be vacated and that petitioner have leave to proceed in propria persona.

Respectfully submitted,

CECIL WRIGHT

Petitioner, Per. se.

Dated: June 20, 1942. [64]

APPENDIX No. 8

EXHIBIT "H"

PETITIONER'S MOTION FOR FURTHER
PROCEEDINGS [65]

[Title of District Court and Cause.]

MOTION FOR FURTHER PROCEEDINGS

To the Honorable A. F. St. Sure:

Now comes Cecil Wright, the petitioner in the above-entitled cause, and moves the above-named Court to issue an order for his appearance on June 26, 1942, for the reason of taking petitioner's testimony under oath.

That notice is hereby given that the counsel heretofore appointed cannot in any way waive any of petitioner's rights. That petitioner requests that he be arraigned in Court on June 26, 1942, for a hearing at which time petitioner will testify under oath.

Wherefore: petitioner prays that the above-named Court in pursuant to R. S. 757, 28 U.S.C.,

Sec. 457, 28 U.S.C.A., R.S. 758, 28 U.S.C., Sec. 458, 28 U.S.C.A. issue an order for petitioner's appearance as herein prayed for.

Respectfully submitted,

CECIL WRIGHT

Petitioner, Per se.

Dated: June 20, 1942. [66]

APPENDIX No. 9

EXHIBIT "I"

RESPONDENT'S REPLY BRIEF [67]

[Title of District Court and Cause.]

RESPONDENT'S REPLY BRIEF

The petitioner in his preliminary brief has raised two points which he claims are of sufficient magnitude to compel this Court to grant his release on habeas corpus. Briefly stated, these points are that inasmuch as he was originally in the custody of the State authorities, the Federal Court in Illinois had no jurisdiction to pass judgment upon him. As a corollary to that he argues that the United States Court did not have the power to impose a sentence upon him which would not commence to run until after he had served the sentence which was imposed by the State Court.

The other point raised by the petitioner is necessarily bound up in the first point. It is that he

earned 1800 days good time which should be applied to his Federal sentence. The answer to this is simple, the good time is claimed earned while the petitioner was incarcerated in the States penitentiary. Obviously a man cannot earn good time to be applied to a Federal sentence at a time when he is not serving that Federal sentence.

On the question of the jurisdiction and power of the Federal Court in Illinois, petitioner has argued at some length and has cited in his brief a number of authorities which he claims supports his contention that his Federal sentence is illegal and void. In citing these authorities the petitioner has avoided the citation of any case which deals directly with the situation in which he finds himself. The facts are that this petitioner was brought before the United States District Court for the Eastern District of Illinois at Danville, Illinois, by means of a writ of habeas corpus ad prosequendum, which was issued on August 29, 1930. He appeared in the United States District Court on September 16, 1930, at which time he entered a plea of not guilty and on that date Attorney J. D. Allen was appointed to defend him and his co-defendants. Petitioner was tried and found [68] guilty on September 17, 1930, and on that date was sentenced to serve a term of 10 years in the United States Penitentiary.

The judgment which was issued on September 17, 1930, states specifically, after a recital of the sentence:

“It is further ordered by the Court that the sentences herein imposed shall begin upon the

expiration of the sentences which the said defendants are now serving in the Southern Illinois Penitentiary.”

It is the contention of the petitioner that his sentence was indefinitely suspended and he cites numerous authorities which hold that where a sentence is indefinitely suspended the sentence is void. The authorities cited by the petitioner are unquestionably the law in the cases in which they were intended to apply, but it is not a fact that in his case the sentence was indefinitely suspended. It was to begin to run on the date that he was released from incarceration by the State authorities. The authorities are numerous that sentences of this type are valid. We respectfully refer the Court to the case of

Ex Parte Lamar. 274 Fed. 160

where the same point was decided by the Second Circuit, where the Court said:

“It is there clearly expressed that the Judge fixed the commencement of service after the expiration of Lamar’s term at Atlanta. No authority supports the claim that Judge Cushman was prohibited from fixing the date of the commencement of this term to such future date. To hold otherwise would be making a mockery of the law and to stultify the course of justice.”

We also find the same principle of law laid down in this Circuit, where Judge Gilbert expressed the rule as follows:

“In the present case the judgment, in providing that imprisonment should begin at the expiration of a sentence that precedes it, accords with the recognized practice, and it cannot be said to be void for uncertainty, ‘since it is as certain as the nature of the matter will permit’. 16 C. J. 1306, *Howard v. United States*, 75 F. 986.”

Austin v. United States, 19 Fed. (2d) 127 [69]

A more recent expression of the rule can be found in this Circuit in the case of *McNealy v. Johnston*. This case involves another petitioner from Alcatraz who raises the same point as here raised by this petitioner. In that case Judge Stephens in writing the opinion, quoted the sentence imposed upon *McNealy*, which read as follows:

“It is, therefore, Ordered and Adjudged by the Court that James McNeeley alias James McNealy be, and he is sentenced to imprisonment in the Atlanta Penitentiary for a period of Three (3) Years, the serving of said sentence to begin at the expiration of the sentence he is now serving for the Southern District of Florida.”

In commenting upon this sentence the Court used the following language:

“It has often been held by the Courts that when two or more sentences are imposed against the same person to imprisonment in the same institution, or the same type of institu-

tion, the presumption is that they are to be served concurrently rather than consecutively, unless the contrary clearly appears. Any reasonable doubt or ambiguity on that point is resolved in favor of the defendant. On the other hand, a judgment must be reasonably construed in accordance with the intent of the trial court, if the language discloses such intent clearly and without doubt or obscurity."

* * * * *

"We think there is no serious uncertainty in the language of the trial court, 'the serving of said sentence to begin at the expiration of the sentence he is now serving for the Southern District of Florida'. We therefore hold that the sentence imposed by the Alabama court is valid."

McNealy v. Johnston. 100 Fed. (2d) 280.

It will thus be seen that the authority of the Court to impose such a sentence as was imposed upon the petitioner is well supported in the law. The cases are numerous that a sentence of this type is valid. Those authorities which are cited by the petitioner are not in point because they apply only in cases where sentence was suspended without any date being set as to when the sentences should commence to run. The petitioner's contention to the effect that the District Court in Illinois had no jurisdiction to impose sentence upon him is clearly without merit. The fact is that he was [70] before the Court on a writ of habeas corpus ad prose-

quendum and the Court, having his body before it, had the power to impose sentence upon him.

Petitioner also contends that inasmuch as he claims he is still under sentence in the State Court for the balance of his natural life, that therefore his State sentence has not expired and he is being illegally restrained by the Federal authorities. This is a specious argument because the fact is as disclosed by the petitioner himself, that he was released from physical custody by the State on October 31, 1939. He was no longer under obligation to serve any time in a State penitentiary. Upon his release he was taken into custody by the Federal authorities and at that time entered upon his sentence in the Federal penitentiary. We can see no merit to this point of the petitioner's argument.

There are other points raised in the petition which, however, are to be the subject of a separate brief and these matters will be covered by a Memorandum to be filed after the testimony of various witnesses is taken in the State of Illinois.

Respectfully submitted,

FRANK J. HENNESSY

United States Attorney [71]

APPENDIX No. 10

EXHIBIT "J"

PETITIONER'S CLOSING BRIEF [72]

[Title of District Court and Cause.]

PETITIONER'S CLOSING BRIEF

The respondent has filed a reply brief and argues allegations that are irrelevant which do not support the issue at bar. The respondent's reply brief consists of irrelevant allegations and to avoid a conflict of allegations petitioner will cross each paragraph in the respondent's reply brief separately.

The respondent argues at page one, paragraph one, that the petitioner was originally in the custody of the state authorities. However, petitioner stated in his opening brief that the federal court first took criminal jurisdiction by indicting petitioner at the May, 1930, term of court and confined him to the Vermillion County Jail in exclusive custody of the United States Marshal.

Vide: Certified copies of federal indictments which are marked as petitioner's exhibit "A", filed June 5, 1930.

Vide: Letter from R. A. Merlie, Vermillion County jailer for reference to jail commitment which is marked as petitioner's exhibit "C".

Vide: Certified copy of state indictment No. 239 filed July 15, 1930, which is marked petitioner's exhibit "B".

The above exhibits should be scrutinized carefully by the Court as such exhibits clearly show which

Exhibit "J"—(Continued)

court between state and federal first acquired exclusive jurisdiction of petitioner's person. The respondent further states at page one, paragraph one, that the petitioner argued that the federal court did not have jurisdiction to pass judgment upon him, but petitioner's argument was to the [73] contrary and clearly expressed in his opening brief. Petitioner stated that if he was in exclusive custody of the state authorities then the federal court was without power to imprison him until he had satisfied the state judgment and sentence in full. Petitioner further stated in his opening brief that if he was in exclusive custody of the federal court then he was entitled to serve his sentence without delay.

The petitioner respectfully refers the court to petitioner's exhibit "D" which clearly shows that petitioner was paroled on October 31, 1939, and was not discharged as indicated by the respondent's records. That petitioner's opening brief covers the jurisdictional question involved, and although a burden it is necessary for petitioner to recite for the benefit of the respondent.

The respondent argues at pages one and two, paragraph two, that petitioner claims that he had earned 1800 days good time while incarcerated in the state prison, but petitioner's argument as to the good time was that if his federal sentence started when imposed he would be subject to good time allowance from the date of sentence.

Vide: *In re Jennings*, supra, 118 F. (C.C.) 479, 482.

Exhibit "J"—(Continued)

That respondent argues at page two, paragraph three, that petitioner avoided citation of any case which deals directly with the situation in which he finds himself. That petitioner was brought before the federal court on a writ of habeas corpus ad prosequendum, which was issued on August 29, 1930. To the respondent's claim petitioner respectfully calls to the Court's attention the fact that it would make no difference whatsoever as to what method the petitioner was produced in the federal court. The respondent claims that the authorities are numerous that sentences such as the petitioner's are valid but fails to cite any case to substantiate his allegations. The respondent has cited the following cases and claims that such cases are the law when applied against the petitioner's contentions that the trial court indefinitely suspended the execution and enforcement of the judgment after sentence was imposed.

Ex parte Lamar, 274 Fed. 160;

Austin v. United States, 19 F. (2d) 127;

McNealy v. Johnston, 100 F. (2d) 280.

The case of Ex parte Lamar, *supra*, holds if a sentence is vague and indefinite the terms will run concurrently. In the Lamar Case Judge Manton wrote an [74] opinion at considerable length which no doubt was to point out what constituted an indefinite suspension of the execution and enforcement of the judgment and sentence. Judge Cushman could fix a definite date for Lamar's sentence

Exhibit "J"—(Continued)

to start as the former sentence had a definite expiration date. But here in the petitioner's case Judge Lindley did not fix any date for the sentence to start as the date of October 31, 1939, was the date when the release was ordered by the Parole Board. It is certain that Judge Lindley did not know what date petitioner would be paroled and therefore could not fix the date when the sentence was to begin to run. It therefore must be conceded that the execution and enforcement of the judgment was indefinitely suspended after sentence was imposed. The case of *Ex parte Lamar*, *supra*, no doubt would be controlling as to petitioner's contentions that the sentence is vague and indefinite.

The next two cases in line *Austin v. United States*, *supra*; *McNealy v. Johnston*, *supra*, have no application as against petitioner's contentions that Judge Lindley failed to fix a definite date for the sentence to begin to run. In the *McNealy* case the sentencing Judge fixed the date when the sentence was to begin as the Florida sentence had a definite discharge date. The *Austin* case was of the same nature as *McNealy's* case, and therefore respondent has failed to show by what laws that Judge Lindley was empowered to indefinitely suspend the execution and enforcement of the judgment after sentence was imposed. Could Judge Lindley order the federal sentence to begin upon the expiration of the state sentence of not less than one year and no more than natural life?

"Thus a sentence to commence after the expira-

Exhibit "J"—(Continued)

tion of a 'former sentence' or 'sentence aforesaid', but containing nothing which shows to what these terms * * * relate, is void for uncertainty."—16 C. J. Sec. 3082, et seq. p. 1306-7, and cases insistent in all its terms, and not ambiguous." Ante. P. 1303; 19 Ency of Pl. and Pr. P. 746; authorities cited as the rule in *Biddle v. Hall*, 15 Fed. (2d) 840.

Petitioner, respectfully cites the rules laid down by the Supreme Court for the guidance of district Courts and their Clerks, as promulgated, as follows: (U. S. C. Title 28, Sec. 723a, Sec. 1-3); Vide *infra*:

"Insert sentences and * * * state whether they are to run concurrently or consecutively and, if consecutively, when each term is to begin; that is with reference to the termination of the preceding term; or with respect to any other outstanding or [75] unserved sentence." District Court form No. 61, footnote 6-7-8; from S. Ct. "Rules of Practice and Procedure" after verdict, plea of guilty, in criminal cases in District Courts of the United States. Vide: *Fletcher v. United States*, (1937) 302 U. S. 218.

That in view of the three sentences imposed in Case No. 11032 without the order of sequence it could be argued as to which sentence would start first after petitioner's parole by state authorities; that under the rules cited *supra* it would seem that

Exhibit "J"—(Continued)

such rules would apply to the state sentence as well as several sentence imposed by the federal court; the fact that the state sentence was an outstanding and unserved sentence cannot be ignored in respect to the sequence of sentences imposed by different courts; that since the state sentence was an indefinite term and would not expire by lapse of time, the federal court could not enter provisions which would be indefinite; that it must be conceded in favor of the petitioner that the federal sentence in the absence of specific provisions started and ran concurrently with the state sentence and has escaped by lapse of time.

Petitioner, citing U. S. v. Daugherty, 299 U. S. 326, 70 L. Ed. 309, 46 S. Ct. 156, in which the Supreme Court said:

"The sentence should be couched in direct, clear, and unambiguous language, admitting of no uncertainty in any of its terms." (Italics Added.)

The petitioner argues that the above rule laid down by the Supreme Court in the Daugherty Case would, when applied to the case at bar, be direct controlling and any other holding would be to hold a federal court could impose a sentence to start at any time no matter how indefinite the terms might be. Here in the petitioner's case the indefiniteness of the state sentence is well established, and the provisions by the trial court are ambigu-

Exhibit "J"—(Continued)

ous and uncertain in respect as to the commencement of the federal sentence.

Petitioner, citing *In re Jennings*, (C.C.) 118 F. 479, 482, in which the Court said:

"Where an execution of sentence has not been stayed by an appeal, the term of imprisonment given by such sentence should be computed from the date of sentence, and it must be presumed in favor of the prisoner that he would have earned his allowance of time for good behavior given by this section, as it is not material that during a portion of the time during which the prisoner has been confined, he was held ostensibly for an offense other than [76] that for which he was originally convicted, since in the eye of the law, he has all the time been serving out the sentence that was imposed upon him." (*Italics Added*)

The petitioner did not stay his sentence by an appeal for the reason that he was under the impression that the federal and state sentences were running concurrently; that in view of the fact that the sentence was not stayed by an appeal, and in view of the marshal's exclusive custody and control of the petitioner, 'could the marshal's failure to execute the warrants of commitments be based on the provisions entered in the absence of the petitioner?'

Petitioner, citing *In re Jennings*, (C.C.) 118 F. 479, 482, in which Circuit Judge Thayer said:

Exhibit "J"—(Continued)

"The law contemplates that, after a prisoner has been tried and sentenced, he will be committed at once to the custody of the prison officials where the sentence is to be executed. He passes by virtue of the sentence into a custody different from that of the court before which he was convicted." (*Italics Added*)

The petitioner argues that when the Clerk of the Court issued the commitments in pursuant to the judgment and sentence of September 17, 1930, no mentioning was made by the order of the court that the sentence should start at a later date. The mandate of the court commanded the marshal to deliver the petitioner as soon as possible to the United States Penitentiary, Leavenworth, Kansas, there to be imprisoned in pursuant of the said sentence, and to deliver to the warden of said penitentiary a duly certified copy of said sentence, under the seal of the said court. Hereof Fail Not, and of this writ and your doings thereon make due return. The petitioner argues that after the marshal failed to obey the mandate of the court the Clerk entered provisions attempting to cover the marshal's failure to deliver the petitioner which altered the original instructions entered upon the records September 17, 1930. The petitioner argues that if such provisions had of been entered on the date of his sentence then it would have been unnecessary for the Clerk to issue a commitment to the marshal. But in petitioner's argument he points to the fact

Exhibit "J"—(Continued)

that the marshal's instructions were to execute the writ and his doings thereon make due return. The writ issued from under the hand and seal of the Clerk of the trial court on September 17, 1930, witnessed by the sentencing Judge, in the name of the President of the United States of America, commanding the marshal to execute the writ and make due return; that on October [77] 31, 1939, the marshal took petitioner into his custody at the Southern Illinois State Penitentiary, Menard, Illinois; that petitioner had been paroled under a one to life sentence and was at that date still under the judgment of the state court; that nine years one month and thirteen days elapsed before the marshal executed the commitment; this the petitioner argues was not the order of the writ as no mentioning was made that petitioner be returned to the state authorities after his sentence was imposed by the trial court; the marshal made his return on the writ nine years one month and thirteen days after sentence was imposed; this the petitioner argues was not the instructions of the court as shown in the writ; that if the marshal was ordered to make due return, 'could he make his return nine years one month and thirteen days later and be within requirements of the trial court's mandates?'

Petitioner, citing *Eyler v. Aderhold* (C.C.A. 5) 73 F. (2d) 372, 373, in which the Court said:

"(2-5) It has been the rule, in the absence of statute that if the commitment is silent as to

Exhibit "J"—(Continued)

the date the sentence shall begin to run, it will commence with the date of delivery to the designated jail. Prior to the adoption of the Act of Congress June 29, 1932, it was quite usual in sentencing a convicted person to impose the statutory penalty and give credit for such time as he had been confined in jail awaiting trial. This sometimes led to an arbitrary construction of the commitment by the jailer, which tended to deprive the prisoner of the credit intended to be given by the court. It also frequently happened that after sentence the prisoner would be detained in a local jail awaiting transportation to the penal institution in which he was to be confined for service of the sentence. Credit on the term could not be given for this imprisonment unless the commitment so provided. It is to be assumed that Congress intended to prevent situations such as these that might be detrimental to the rights of the prisoner as well as to make certain the date when a sentence legally began, something very necessary for the reasonable and proper application of the parole laws. Of course, a judge may take into consideration the time a person has remained in jail awaiting trial in imposing the sentence and if, through an unavoidable delay or the carelessness of the marshal, his delivery to a penitentiary or other penal instructions is postponed, his rights will not suffer." (*Italics Added*)

Exhibit "J"—(Continued)

Petitioner argues that no provisions were made for the date of October 31, 1939, and the commitments and judgments are both silent to the date that the sentence was to begin to run; that in no way can the parole date of October 31, 1939, [78] be considered as the date when the federal sentence was to begin; the petitioner further argues that the state parole board did not set the date of his release and only continued his state sentence until paroled on October 31, 1939. The only dates appearing in the judgments and commitments are of September 17, 1930.

Petitioner, citing *Ex parte Lyman*, 247 Fed. 611, in which the Court said:

"The time of one's sentence begins to run from the date he is received by the warden of the penitentiary, or from the time he is sentenced as shown by the date of such judgments." *Vide* IV Edition, *Atwell Fed. Cr. Law*, P. 174. (*Italics Added*)

The petitioner argues that in view of the above facts supported by the trial court's records together with the authorities of law it is clear that the sentence began on September 17, 1930, and has escaped by lapse of time; that any other holding would give a judge power to impose the punishment and enforce it in excess of what Congress intended for the prisoner to serve; that Congress passes the laws and fixes the maximum punishment and leaves it up to the discretion of the court

Exhibit "J"—(Continued)

to come within the limits; it is quite plain that Congress intended that the petitioner be punished within the scope of Sections 315, 313, 88 and 408 of title 18 of the Code of laws of the United States; that petitioner has been held under and by color of authority of the judgment and sentence of the United States District Court since September 17, 1930; that said sentence was entered and spread upon the minutes of the court September 17, 1930.

Petitioner, citing *Lunsford v. Hudspeth*, 126 F. (2d) 653, at page 655, Mr. Murrah, Circuit Judge, said:

"(1-2) Embedded in the question presented is an interplay between state and federal sovereignties in the exercise of the power of each to enforce and vindicate its laws. Out of the exercise of this power has evolved the new axiomatic rule of law that a sovereignty, or its courts, having possession of a person or property cannot be deprived of the right to deal with such person or property until its jurisdiction and remedy is exhausted, and no other sovereignty or its courts has the right or power to interfere with such custody or possession." *Ponzi v. Fessenden*, 258 U. S. 254, 42 S. Ct. 309, 66 L. Ed. 607, 22 A.L.R. 879; *Ex parte Johnson*, Petitioner, 167 U. S. 120, 17 S. Ct. 735, 42 L. Ed. 103; *Covell v. Heyman*, 111 U. S. 176, 4 S. Ct. 355, 28 L. Ed. 390; See *Toucey v. New York Life Ins. Co.*, 62 S. Ct. 139, rev.

Exhibit "J"—(Continued)

112 F. (2d) 927; rev. 115 F. (2d) 1, (*Italics added.*)

Petitioner argues that the federal government had exclusive jurisdiction and the right to retain such jurisdiction until the indictments were prosecuted [79] and the judgment and sentence satisfied thereunder. *Ponzi v. Fessenden*, *supra*. The Court which first takes the subject-matter of the litigation into its control, whether this be person or property, must be permitted to exhaust its remedy, to attain which it assumed control, before the other court shall attempt to take it for its purpose. This superior right to retain the custody of a prisoner without interference is justified in this language: "It is a principle of right and of law, and therefore, of necessity. It leaves nothing to discretion or more convenience. Those courts (federal and state) do not belong to the same system, so far as their jurisdiction is concurrent. * * * When one sovereignty takes into its jurisdiction a specific thing, that res is as much withdrawn from the judicial power of the other, as if it had been carried physically into a different territorial sovereignty."

Petitioner, citing *Lunsford v. Hudspeth*, 126 F. (2d) 653, at page 659, Mr. Huxman, Circuit Judge dissenting, said:

"After imposing sentence, the journal entry of judgment provided that the prisoner be committed to the custody of the Attorney General for imprisonment on his federal sentence.

Exhibit "J"—(Continued)

When was he to be delivered to the Attorney General? At the conclusion of the state sentence? The answer is no. It was the Court's duty to fix not only the length of the sentence, but also the time when it began. A sentence by a federal judge may not be left suspended in midair. The judge could not impose a sentence to commence at some indefinite time in the future. *McPike and Zerbst, D.C., 21 F. Supp. 961*, * * * contemplates that the sentence begins to run from the time the marshal receives the commitment, which is the order to execute the sentence. And we should so hold unless there is something in the sentence or order of commitment, clearly indicating the contrary." In my view the principles announced in *McPike v. Zerbst, supra*; *Smith v. Swope, (C.C.A. 9) 91 F. (2d) 260*; *Albori v. United States, 67 F. (2d) 4*; are controlling, and should determine the question under consideration. For those reasons, I am forced to respectfully dissent." (*Italics added*)

Petitioner argues that in view of the United States exclusive jurisdiction over his person with the majority of decisions in petitioner's favor with direct controlling effect it would be petitioner's right to discharge by habeas corpus. The judgments and commitments of the trial court were entered and spread upon the minutes of the Court September 17, 1930; that even the provisions entered

Exhibit "J"—(Continued)

by Clerk of the Court are indefinite and even if the Clerk had acted with instructions from the trial judge in the absence of the petitioner the provisions would [80] be void for uncertainty; the judge of the trial court did not specify from the date of delivery to the penitentiary; the judgments and sentences that were entered into the Clerk's minutes September 17, 1930, have been rearranged to read differently than the original sentence imposed in the presence of the petitioner; the petitioner argues that in 1935 copies of the indictments, judgments and commitments were obtained from the trial court by one of petitioner's codefendants; that the commitments issued to petitioner's codefendants read differently than the commitments issued to this petitioner; that upon passing of judgment and sentence on September 17, 1930, the petitioner along with his codefendants were arraigned and received sentence at the same time; that the judge in imposing sentence said: " * * * Each be imprisoned in the United States Penitentiary at Leavenworth, Kansas * * *." The petitioner argues that the trial judge imposed a joint judgment and the Clerk's minutes should now read otherwise; whether or not such a joint judgment and sentence is legal is not contested and merely illustrated to show that under the joint judgment the records of each prisoner involved would read the same; that the Clerk of the Court did alter such records and could have as easily

Exhibit "J"—(Continued)

altered his short book to read the same as the records which he had reconstructed. That rule (1) of the Rules of the Supreme Court in Criminal Cases was amended May 24th, 1937, by the addition of this sentence: "The judgment setting forth the sentence shall be signed by the judge who imposes the sentence and shall be entered by the Clerk." Prior to the order of the Supreme Court making this amendment, the sentence as pronounced by the Court was entered by the Clerk in his minutes, and from them the docket entry with respect to the judgment was made, and some confusion arose from this practice, as shown by the following statement of the prior law by the Supreme Court:

"The only sentence known to the law is the sentence or judgment entered upon the records of the Court. *Miller v. Aderhold*, 288 U.S. 206, 210, 77 L. ed. 702, 705, 53 S. Ct. 325; *Wagner v. United States* (C.C.A. 9th) 3 F. (2d) 864; and *Manke v. People*, 74 N.Y. 415, 424. If the entry is inaccurate, there is a remedy by motion to correct it to the end that it may speak the truth. *People ex rel. Trainor v. Baker*, 89 N.Y. 460, 466. But the judgment imports verity when collaterally assailed. *Ibid.* Until corrected in a direct proceeding, it says what it was meant to say, and this by an irrebutable presumption. In any collateral inquiry, a court will close its ears to a suggestion that the sentence entered in the minutes is something other than the authentic expression of the sentence

Exhibit "J"—(Continued)

of the judge." (Hill v. U. S., 298 U.S. 460, [81] 464, 80 L. ed. 1283, 56 S. Ct. 760.) (Italics added)

Petitioner argues that nine years one month and thirteen days elapsed before he became familiar with the fact that the Clerk of the Court had reconstructed the judgments and commitments that were issued on September 17, 1930; that for nine years one month and thirteen days after petitioner was sentenced he was lead to believe that his federal sentence was running concurrently with his state sentence; that after petitioner was granted a parole by the state parole board he finds that the Clerk of the Court has inserted provisions to cover the marshal's failure to comply with the commitments; that petitioner immediately moved the trial court to set aside the judgment and sentence and to correct the provisions entered into the commitment by the Clerk; the trial judge merely said he was without jurisdiction to correct the judgment and sentence of September 17, 1930, after it had begun to run. As said in the above statement by the Supreme Court the judgment imports verity when collaterally assailed; the judgments in cases No. 11032 and 11074 clearly show that the sentence was imposed on September 17, 1930; the petitioner argues in view of the above cited cases the trial court could not suspend the execution of the sentence indefinitely no matter who entered the provisons; that the sentence of the court was to be imprisoned in

Exhibit "J"—(Continued)

the Leavenworth Penitentiary for terms totaling fifteen years; that if the sentence began to run on September 17, 1930, in view of the authorities of law above cited, then the sentence of September 17, 1930, has escaped by lapse of time; that it was mandatory to discharge the petitioner after he served ten years one month and twenty-five days from date of sentence less deduction of eighteen hundred (1800) days statutory good time; that 18 U.S.C. Sec. 713 provided that a prisoner be discharged after service of his sentence less deduction of good time for good behavior; that the Act of Congress June 19th, 1902, section (1) provided for a sentence of ten (10) years or more, ten (10) days each month shall be deducted for good behavior; the petitioner argues that it is not material that during a portion of the time during which he was confined, he was held ostensibly for an offense other than that for which he was originally convicted, since in the eye of the law, he has all the time been serving out the sentence that was imposed upon him. Vide: *In re Jennings*, supra, 118 F. (C.C.) 479, 482.

Petitioner, citing *White v. Pearlman*, 42 F. (2d) 70, 194, in which the Court said: [82]

"A prisoner has some rights. A sentence means a continuous sentence unless interrupted by escape, violation of parole, or some fault of the prisoner, and he cannot be made to serve it in installments."

Exhibit "J"—(Continued)

Petitioner argues that the federal sentence was not interrupted by any fault of his; that the conflict of the state and federal sentence was caused by the voluntary acts of the United States Marshal; that had the United States Marshal held petitioner until he was tried, convicted and sentenced it would not have deprived the state authorities of a prosecution of the state indictment and would have prevented a conflict of the state and federal sentences.

The respondent claims that petitioner was taken from the state prison by a writ of habeas corpus ad prosequendum. The respondent's attorney has furnished petitioner with a certified copy of the trial court's transcript which is incomplete and the order for the writ of habeas corpus ad prosequendum is not a part of said trial court's records.

The means afforded for the production of the petitioner lies in the power of the federal court to issue a writ of habeas corpus ad prosequendum, in accordance with Sec. 453, 28 U.S.C.A., which authorizes the issuance of a writ of habeas corpus when necessary to bring a prisoner into court to testify. There is, however, no magic in the Latin phrase "ad prosequendum" when used in connection with a writ of habeas corpus. It is merely a product of the common law, which comes to us in forms of pleadings and practice. *Ex parte Bollman*, 4 Cranch 75, 8 U. S. 75, 98, 2 L. Ed. 554. The use of the phrase "ad prosequendum" confers no power

Exhibit "J"—(Continued)

not granted by the Constitution and laws of the United States.

The petitioner states that he does not believe that a writ of habeas corpus ad prosequendum was used for the purpose of his conveyance from the State Prison to the federal court as he was in the exclusive custody of a United States Deputy Marshal from the time he was taken from the state prison until he was returned to the state prison after his trial in the federal court. However, there may have been a writ of habeas corpus issued and if this were true as respondent claims, 'where is the order of the writ of habeas corpus ad prosequendum?' The respondent fails to find such an order and so does the petitioner; although the docket entries indicate that a writ of habeas corpus ad prosequendum was issued on the 29th day of August, 1930, there is no such order at the present to substantiate respondent's allegations. The petitioner states if such an order was [83] present it would make no difference as the jurisdiction of petitioner's person first went to the federal court as clearly shown by petitioner's exhibits.

The petitioner has written at considerable length to point out the question of the federal court's exclusive jurisdiction, and motions the court to quash respondent's reply brief for the reason that it raises irrelevant allegations.

Respectfully submitted,

CECIL WRIGHT

Petitioner, Per se.

Exhibit "J"—(Continued)

State of California

County of San Francisco—ss.

Cecil Wright, being duly sworn, deposes and says: That he is the petitioner in the above-entitled action; that he has read the foregoing brief and knows the contents thereof; that the same is true of his own knowledge, except as to those matters which are therein stated on his information and belief, and as to these matters he believes it to be true.

CECIL WRIGHT

Affiant-Petitioner.

Subscribed and sworn to before me this 8 day of August, 1942.

E. J. MILLER,

Associate Warden

United States Penitentiary,

Alcatraz, California.

Warden-Associate Warden authorized by the Act of February 11, 1938, to administer oaths.

[84]

APPENDIX No. 11

EXHIBIT "K"

PETITIONER'S AFFIDAVIT TO THE TRIAL
COURT MADE TWENTY-FOUR HOURS
AFTER SAID ARRAIGNMENT AND AP-
POINTMENT OF COUNSEL. [85]

In the District Court of the United States of
America for the Eastern District of Illinois
September Term A.D. 1930

No.

THE UNITED STATES OF AMERICA

vs.

TUCK WRIGHT, ROBERT RAYMOND, CARL
SANDERS MONTE CRIST, AND JOSEPH
HARTMAN.

Tuck Wright, one of the above named defendant, makes oath and says that he cannot safely proceed to trial of this cause at the present term of this court on account of the absence of one Glen Rommel and one Mary Rommel both of whom are material witnesses for the defendant in said cause, and whose residence is 713 South Oakland Court, Decatur, Illinois. That this affiant expects to prove by said witnesses, Glen Rommel, and Mary Rommel, the following matters, all of which are material to the issues involved in said cause: to-wit: That this

affiant was not in Strasburg, Illinois, on the 9th day of April, 1930, when the Post Office of the United States at said place was burglarized; that this affiant was severely injured and was in the City of Decatur under the care of one Dr. McGill, and was not at or near the scene of the supposed crime; that all the matters and things which the defendant expects to prove by the said Glen Rommel and Mary Rommel, are true.

And this affiant further says that he tried to communicate with the said Glen Rommel and Mary Rommel by writing to them letters out of the Southern Illinois Penitentiary but was prevented from doing so by the rules of said institution which forbid inmates to write more frequently than one in two weeks. This affiant further says that he is informed and believes that the issues involved in this cause will be controverted, and that the evidence relating to such issues will be highly conflicting, as introduced by the respective parties, and that he knows of no other person or persons than the said [86] Glen Rommel and Mary Rommel by whom he can so fully prove the above matters set forth, And this affiant further says that he expects to and believes that he will be able to procure the attendance and testimony of the said Glen Rommel and Mary Rommel at the next term of this Court.

And this affiant further says that the said Glen Rommel and Mary Rommel are not absent by the procurement, connivance or consent of this affiant, either directly or indirectly, and that this applica-

tion is not made for delay, but that justice may be done.

[Signed] CECIL WRIGHT

Affiant.

Subscribed and sworn to before me this 17 day of September A.D. 1930.

[Signed] D. H. REED

Clerk of the United States
District Court. [87]

APPENDIX No. 12

EXHIBIT "L"

TRIAL COURT'S ORDER APPOINTING
COUNSEL IN CASE No. 11032 [88]

In the District Court of the United States for the
Eastern District of Illinois
Tuesday, September 16, 1930

Present: Honorable Walter C. Lindley, Judge.
No. 11032

THE UNITED STATES

vs.

ROBERT RAYMOND, CARL SANDERS, JOS-
EPH HARTMAN AND TUCK WRIGHT

INDICTMENT
VIOLATION POSTAL LAWS

And Now on this 16th day of September, A.D. 1930, comes the United States, the plaintiff in this case, by Harold G. Baker, United States Attorney

for the Eastern District of Illinois, and comes also the defendants Robert Raymond, Carl Sanders, Joseph Hartman and Tuck Wright each in person. And the said defendants being arraigned on the indictment herein for plea thereto, each says that he is not guilty as therein charged; and now it appearing to the court that the said defendants are without legal counsel to defend them and are unable to secure such counsel, it is ordered by the Court that J. D. Allen, an attorney and counsellor of this court, be and he is hereby appointed to defend the said Robert Raymond, Carl Sanders, Joseph Hartman, and Tuck Wright. [89]

* * * * *

APPENDIX No. 13

EXHIBIT "M"

ORDER DENYING PETITIONER'S APPLICATION FOR A WRIT OF HABEAS CORPUS. [90]

In the Southern Division of the United States
District Court for the Northern District
of California

No. 23647-S

CECIL WRIGHT,

Petitioner,

vs.

JAMES A. JOHNSTON, Warden, United States
Penitentiary, Alcatraz, California,
Respondent.

ORDER

After hearing upon a writ of habeas corpus heretofore issued on May 27, 1942, and upon due consideration of the testimony and arguments submitted to the Court for decision, It Is Hereby Ordered:

1. The application of petitioner to be restored to his liberty is denied;
2. The writ heretofore issued on May 27, 1942, is discharged.

The United States Attorney may submit findings of fact and conclusions of law under the rules.

Dated: August 20, 1942.

A. F. ST. SURE

United States District Judge

[Endorsed]: Filed Aug. 20, 1942. [91]

APPENDIX No. 14

EXHIBIT "N"

CERTIFIED COPY OF THE INDICTMENT,
JUDGMENT, COMMITMENT AND MAR-
SHAL'S RETURN.

Note:—The same Counsel was appointed to represent the two defendants in this case No. 11074, as in the case No. 11032. [92]

In the District Court of the United States of
America for the Eastern District of Illinois

May Term, A.D. 1930

Eastern District of Illinois—ss.

The Grand Jurors for the United States of
America empaneled and sworn in the District Court
of the United States of America, for the Eastern
District of Illinois, at the May Term of said court
in the year A.D. 1930, and inquiring for said dis-
trict upon their oaths present: that

Monte Crist,
Cecil Wright, and
Marion Bowles,

hereinafter called the defendants, on or about the
19th day of April, A.D. 1930, did unlawfully, know-
ingly and feloniously transport and cause to be
transported in interstate commerce one certain
Ford Sedan Motor vehicle, then and there bearing
motor number A-2087965, from at or near Loving-
ton, in the County of Multrie, in the State of
Illinois, in the Eastern District of Illinois, and
within the jurisdiction of said court, to East Chi-
cago, in the State of Indiana, which said motor
vehicle had theretofore been stolen at Lovington, in
the state of Illinois, the said defendants then and
there well knowing the same to have been stolen:

Against the peace and dignity of the United
States of America and contrary to the form of the
statute of the same in such case made and pro-
vided.

[Signed]

HAROLD G. BAKER

United States Attorney [93]

In the District Court of the United States for the
Eastern District of Illinois

Wednesday, September 17, 1930

Present: Honorable Walter C. Lindley, Judge.

No. 11074

THE UNITED STATES

vs.

MONTE CRIST, CECIL WRIGHT alias TUCK
WRIGHT and MARION BOWLES

INDICTMENT

VIOLATION NATIONAL MOTOR VEHICLE
THEFT ACT

1 Count, Transportation

And Now on this 17th day of September, A.D. 1930, comes the United States, the plaintiff in this case, by Harold G. Baker, United States Attorney for the Eastern District of Illinois, and comes also the defendants Cecil Wright alias Tuck Wright and Marion Bowles, each in person, and by J. D. Allen, their attorney. And now comes the defendant, Cecil Wright alias Tuck Wright, and by leave of court withdraws his plea of not guilty heretofore entered herein, and instead thereof says that he is guilty in manner and form as charged in the indictment. And now issues being joined as to the defendant, Marion Bowles, and jury being waived,

his case comes on for hearing before the Court, and after hearing the evidence in the case and the arguments of counsel and being fully advised in the premises, the court finds the defendant Marion Bowles guilty in manner and form as charged in the indictment. And now the said defendants, Cecil Wright alias Tuck Wright and Marion Bowles being before the court for sentence and they having nothing to say why sentence should not be pronounced against them—It is, therefore, considered and adjudged by the Court, that the said defendants Cecil Wright alias Tuck Wright, for the offense by him committed in manner and form as charged in the indictment, and as by him confessed, be imprisoned in the United States Penitentiary at Leavenworth, Kansas, for the period of five years, said sentence to run and be served consecutively with the sentence imposed against the said defendant in case No. 11032, and that said defendant be committed to said Penitentiary pursuant to said sentence. And it is considered and adjudged by the Court that the defendant, Marion Bowles, for the offense by him committed, in manner and form as charged in the indictment and as found by the court, be imprisoned in the United States Penitentiary at Leavenworth, Kansas, for the period of five years from the date of the delivery of the said defendant to the Keeper or Warden of the said Penitentiary, said sentence to begin upon the expiration of the sentence which the said defendant is now serving in the Southern Illinois Penitenti-

ary, and that the said defendant be committed to the United States Penitentiary pursuant to said sentence. [95]

[Endorsed]:

United States of America
Eastern District of Illinois—ss.

I, D. H. Reed Clerk of the District Court of the United States for the Eastern District of Illinois, do hereby certify the foregoing to be a true copy of an order made and entered in said Court on the 17th day of September, A.D. 1930, as fully as the same appears upon the records now in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at Danville, in the District aforesaid, this 17th day of September, A.D. 1930.

(Signed) D. H. REED

[Seal] Clerk

I hereby certify that I have executed the within writ by transporting and delivering the within named Tuck Wright to the U. S. Penitentiary at Leavenworth, Kas., the 1st day of November, A.D. 1939.

(Signed) WILLIAM RYAN

U. S. Marshal

#17848

No. 11074

United States District Court, Eastern District of
Illinois

THE UNITED STATES

vs.

MONTE CRIST, CECIL WRIGHT, alias TUCK
WRIGHT and MARION BOWLES

CERTIFIED COPY OF SENTENCE

[Endorsed]: Filed Nov. 7, 1939. D. H. Reed,
Clerk.

5 years U. S. Pen at Leavenworth, Kansas, to
run and be served consecutively with sentence in
Criminal Case No. 11032. [96]

District Court of the United States of America,
Eastern District of Illinois

I, D. H. Reed, Clerk of the District Court of the
United States for the Eastern District of Illinois,
and keeper of the records and seals thereof, do
hereby certify the foregoing to be a true copy of
Indictment; Judgment and Sentence, with Mar-
shal's return thereon, in the matter of United
States of America vs. Cecil Wright, et al, Criminal
No. 11074, as fully as the same appears from the

originals now on file and of record in my office as Clerk of said Court.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at my office in the City of East St. Louis, in the District aforesaid, this 14th day of November, A.D. 1941.

[Seal]

D. H. REED

Clerk [97]

APPENDIX No. 15

EXHIBIT "O"

CERTIFIED COPY OF THE INDICTMENT,
JUDGMENT, COMMITMENT AND THE
MARSHAL'S RETURN IN CASE No. 11032.
[98]

In the District Court of the United States of
America for the Eastern District of Illinois

May Term, A.D. 1930

Eastern District of Illinois—ss.

The Grand Jurors for the United States of
America empaneled and sworn in the District Court
of the United States of America, for the Eastern
District of Illinois, at the May Term of said court
in the year 1930 and inquiring for said district upon
their oaths present: that

Robert Raymond

Carl Sanders

Joseph Hartman

Monte Crist and

Tuck Wright, whose true Christian name

is to the Grand Jurors unknown,

hereinafter called the defendants on, to-wit, the 9th day of April, A.D. 1930, at Strasburg, in the County of Shelby, in the State of Illinois, in the Eastern District of Illinois and within the jurisdiction of said court, did then and there unlawfully, forcibly and feloniously break into a certain building used as a Postoffice of the United States at Strasburg, Illinois, with the intent then and there in them, the said defendants, to commit larceny in said building so used as a Postoffice of the United States.

Against the peace and dignity of the United States of America and contrary to the form of the statute of the same in such case made and provided.

(Signed)

HAROLD G. BAKER

United States Attorney [99]

SECOND COUNT

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present: that

Robert Raymond

Carl Sanders

Joseph Hartman

Monte Crist and

Tuck Wright, whose true Christian name

is to the Grand Jurors unknown,

hereinafter called the defendants on, to-wit, the 9th

day of April, A.D. 1930, at Strasburg, in the County of Shelby, in the State of Illinois, in the Eastern District of Illinois and within the jurisdiction of said court did, then and there unlawfully and feloniously steal, take and carry away from a certain building occupied by the Postoffice Department of the United States at Strasburg, Illinois, certain personal property belonging to the United States to-wit, \$2.43, a more particular description of which said personal property is to the Grand Jurors unknown, with the intent then and there in them, the said defendants, to convert said personal property to their own use.

Against the peace and dignity of the United States of America and contrary to the form of the statute of the same in such case made and provided.

(Signed)

HAROLD G. BAKER

United States Attorney [100]

THIRD COUNT

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present: that

Robert Raymond

Carl Sanders

Joseph Hartman

Monte Crist and

Tuck Wright, whose true Christian name
is to the Grand Jurors unknown,

hereinafter called the defendants did, on or about the 1st day of April, A. D. 1930 and thence continuously throughout the period of time from that

date to the date of the return and filing of this indictment, in the State of Illinois and within the Eastern District of Illinois aforesaid, did unlawfully, wilfully, knowingly and feloniously conspire, combine, confederate and agree together, each with the other, to, during said period of time, in said state and district to violate Sections 313 and 315 of the United States Code, that is to say that they so conspired, confederated and combined and agreed together, each with the other, to unlawfully break into and enter a certain Postoffice of the United States at Strasburg, Illinois, and to steal, take and carry away from said Postoffice certain personal property then and there belonging to the United States. And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present that in the furtherance of and in the pursuance of and in the execution of and for the purpose of carrying out and to effect the object, design and purpose of said conspiracy, combination, confederation and agreement the following overt acts were committed within the jurisdiction of said court:

1. That on or about April 9, A.D. 1930 the said Robert Raymond, Carl Sanders, Joseph Hartman, Monte Crist and Tuck Wright, did assault one William M. Wilson at Strasburg, Illinois. [101]

2. That on or about April 9, A.D. 1930, the said Robert Raymond, Carl Sanders, Joseph Hartman, Monte Crist and Tuck Wright, did break and enter the Post Office of the United States at Strasburg, Illinois.

3. That on or about April 9, A.D. 1930, the said Robert Raymond, Carl Sanders, Joseph Hartman, Monte Crist and Tuck Wright, did steal, take and carry away \$2.43 from the Postoffice of the United States at Strasburg, Illinois.

Against the peace and dignity of the United States of America and contrary to the form of the statute of the same in such case made and provided.

(Signed) HAROLD G. BAKER
United States Attorney

No. 11,032—United States District Court,
Eastern District of Illinois

The United States vs. Robert Raymond, et al.
Indictment for Violation of the Postal Laws.
A True Bill.

(Signed) A. H. FAVREAU
Foreman Grand Jury

[Endorsed]: Filed Jun. 5, 1930. Douglas H.
Reed, U. S. Court Clerk.

(Signed) HAROLD G. BAKER
U. S. Attorney

\$10,000. [102]

In the District Court of the United States
For the Eastern District of Illinois

Wednesday, September 17, 1930

Present: Honorable Walter C. Lindley,
Judge.

No. 11032

THE UNITED STATES

vs.

ROBERT RAYMOND, CARL SANDERS, JO-
SEPH HARTMAN AND TUCK WRIGHT

INDICTMENT VIOLATION OF
POSTAL LAWS

1st—Breaking into Post Office
2nd—Stealing Govt. Property
3rd—Conspiracy.

And now on this 17th day of September, A. D. 1930, comes the United States, the plaintiff in this case, by Harold G. Baker, United States Attorney for the Eastern District of Illinois, and comes also the defendants, Robert Raymond, Carl Sanders, Joseph Hartman and Tuck Wright, each in person, and by J. D. Allen, their attorney. And now comes the defendant Tuck Wright, by his said attorney, and enters motion for a continuance, which said motion is by the court denied, and now comes the said defendant and enters motion for a separate

trial, which said motion is by the court denied, and issue being joined, the following named jurors are tendered and accepted to wit: Stephen Gannon, H. R. Boeschen, G. W. Gilliland, Oscar Forth, D. C. Burrow, Sam Wilson, Harry Beard, Mark Wiseman, William Basinger, Charles Tilton, Dan Fritz and J. W. Snider, who are duly sworn to well and truly try the issue joined in this case and a true verdict render according to law and evidence. And after hearing the evidence in the case, the arguments of counsel, and the instructions of the Court, the jury retire to consider their verdict, and afterward come into Court and for verdict says: "We, the jury find the defendants, Carl Sanders, Tuck Wright, Joe Hartman and Robert Raymond guilty in manner and form as charged in the indictment." And the said defendants being arraigned at the bar of the court for sentence and they having nothing further to say why sentence should not be [103] pronounced against them, it is, therefore considered and adjudged by the Court that the said defendants Robert Raymond, Carl Sanders, Joseph Hartman and Tuck Wright, for the offense by them committed in manner and form as charged in the said indictment and as found by the jury in this case each be imprisoned in the United States Penitentiary at Leavenworth, Kansas, for the period of five years on the 1st count of the indictment, three years on the 2nd count and two years on the 3rd count, from the date of delivery of the said defendants to the Keeper or Warden of the said Peni-

tentiary said sentences to run and be served consecutively; that they each pay a fine to the United States in the sum of Ten Thousand Dollars, that execution issue therefor and that the said defendants stand committed to the said Penitentiary until said fines shall have been fully paid.

It is further ordered by the Court that the sentences herein imposed shall begin upon the expiration of the sentences which the said defendants are now serving in the Southern Illinois Penitentiary.

United States of America

Eastern District of Illinois—ss.

I, D. H. Reed, Clerk of the District Court of the United States for the Eastern District of Illinois do hereby certify the foregoing to be a true copy of an order made and entered in said Court on the 17th day of September, A. D. 1930, as fully as the same appears upon the records now in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the Seal of said Court, at Danville, in the District aforesaid, this 17th day of September, A. D. 1930.

[Seal] (Signed) D. H. REED

Clerk [104]

I hereby certify that I have executed the within Writ as to Tuck Wright by transporting and delivering him to the U. S. Penitentiary at Leavenworth, Kas. this 1st day of November, A. D. 1939.

(Signed) WILLIAM RYAN

U. S. Marshal

No. 11032

#22413

United States District Court
Eastern District of Illinois

THE UNITED STATES

vs.

ROBERT RAYMOND, CARL SANDERS, JO-
SEPH HARTMAN AND TUCK WRIGHT

CERTIFIED COPY OF SENTENCE

[Endorsed]: Filed Nov. 7, 1939. D. H. Reed,
Clerk.

10 years U. S. Pen at Lenvenworth, Kansas;
and to pay a fine of \$10,000.00; stand committed.

[105]

APPENDIX No. 16

EXHIBIT "R"

ORIGINAL LETTER FROM THE STATE
PAROLE BOARD [106]

Members of the Division

W. C. Jones, Superintendent

Frank D. Whipp

Milton H. Summers

William J. Smith, Jr.

Paul L. Schroeder, M.D.
Roy G. Barrick, M.D.
James G. Gullett,
Assistant Superintendent
George W. Schwaner, Jr.
Secretary
Robert B. Phillips,
Chief Clerk

State of Illinois

Dwight H. Green, Governor
Department of Public Safety
T. P. Sullivan, Director

DIVISION OF CORRECTION
Springfield

August 24, 1942.

Subject: Cecil Wright, No. 15386—Menard

Mr. Cecil Wright
Box No. PMB 579
Alcatraz, California

Dear Sir:

Your letter of August 20, 1942, has been received.

As I advised you in my letter of October 30, 1941, to which you are referred, which was written in reply to your letter of October 21, 1941, whenever you are released from Alcatraz, you will be required to do an Illinois parole, and I suggested you communicate with the Parole Officer at the

Menard Division of the Illinois State Penitentiary.

You ask for the necessary parole reports for the first year, including the arrival slip, and you ask for the name of the Parole Officer for Coles County, as you state you intend to live in Mattoon, Illinois, and work in the Brown Shoe Factory, where your brother is a foreman.

I am today sending your letter for attention to Mr. J. L. Lawder, Parole Officer, Menard Division, Illinois State Penitentiary, Menard, Illinois.

I do not know whether or not Mr. Lawder has been advised by the Alcatraz authorities of your pending release date, but it is noted you state you are expecting it soon. Mr. Lawder will be requested to take care of this matter.

Yours very truly,

ROBERT B. PHILLIPS

R. B. Phillips,
Chief Clerk.

RBP:KW

CC: Mr. Lawder, Menard

Mr. Summers, Springfield. [107]

APPENDIX No. 17

EXHIBIT S

ORIGINAL LETTER FROM THE ILLINOIS
STATE PAROLE OFFICER [108]

STATE OF ILLINOIS

Dwight H. Green, Governor

DEPARTMENT OF PUBLIC SAFETY

General Office, Springfield

DIVISION OF SUPERVISION OF
PAROLEES

Milton H. Summers, Superintendent

Parole Office,

Illinois State Penitentiary

Menard, Illinois

T. P. Sullivan, Director

Alvin S. Keys, Assistant Director

Col. Frank D. Whipp, Supt. of Prisons

Paul L. Schroeder, M.D., Criminologist

W. C. Jones, Superintendent of Correction

Leo E. Carr, Supt. of State Police

William J. Smith, Jr.,

Supt. of Crime Prevention

John H. Craig, Fire Marshal

R. T. Piper, Acting Supt. Bureau of

Criminal Identification and Investigation

August 25, 1942

Mr. Cecil Wright
Box No. PMB 579
Alcatraz, California

Dear Sir:

Your letter of August 20 directed to Mr. Robert B. Phillips has been referred to this office for attention and reply.

Upon your arrival in Mattoon, Illinois, contact your district parole agent, Mr. E. B. Vanscoyk, Westfield, Illinois. He will make the necessary arrangements to place you under parole supervision in this state. Also, send notice to this office and we will supply you with parole report blanks.

Yours very truly,

J. L. LAWDER,

Parole Officer

Illinois State Penitentiary

Menard, Illinois

Ccy: Mr. Phillips
Mr. Summers
JLL:EF [109]

State of California
County of San Francisco—ss.

Cecil Wright, being first duly sworn deposes and says: that he has read the foregoing exhibits and the same are true copies of the originals on file in the United States District Court for the Northern District of California Southern Division, San Francisco, in Wright v. Johnston, No. 23647-S.

That he further says that he waives the right for the production of his body in this cause and that his petition may be decided upon the merits of the case from this petition and the foregoing exhibits which are made a part of the said petition for a writ of habeas corpus ad subjiciendum.

CECIL WRIGHT,

Affiant, Petitioner

(Verification) [110]

United States of America

Ninth Judicial Circuit

Northern District of California—ss.

IN THE MATTER OF THE PETITION OF
CECIL WRIGHT TO WILLIAM DENMAN,
UNITED STATES CIRCUIT JUDGE FOR
THE NINTH JUDICIAL CIRCUIT, FOR A
WRIT OF HABEAS CORPUS AD-
DRESSED TO JAMES A. JOHNSTON,
WARDEN, UNITED STATES PENITEN-
TIARY, ALCATRAZ ISLAND, CALIFOR-
NIA.

WRIT OF HABEAS CORPUS

To James A. Johnston, Esq., Warden of the United
States Penitentiary, Alcatraz Island, Cali-
fornia:

It appearing from the petition herein that Cecil Wright was duly tried and convicted by a state court of the State of Illinois for violation of the

criminal law of that state, and was thereafter duly sentenced by said state court for a period of not less than one year nor more than the lifetime of said Wright; and that, under the law of the State of Illinois, the said sentence was in part for imprisonment in the Southern Illinois Penitentiary and, in part, under certain conditions, served under parole. That said sentence has not expired but that the said Wright, having served part of said sentence in said penitentiary, is now serving the said sentence under [111] parole of the Illinois Department of Public Safety, Division of Supervision of Parole.

And it further appearing that the said Wright is now held in custody by the said Warden Johnston in the United States Penitentiary at Alcatraz Island, California, in the Northern District of California, and in the Ninth Judicial Circuit, upon the claimed authority of orders of commitment to him, upon two sentences of imprisonment in a United States penitentiary rendered by the United States District Court for the Eastern District of Illinois. That each of said Federal sentences provide that it shall commence "upon the expiration of the sentence which the said defendant is now serving in the Southern Illinois Penitentiary," the said latter sentence being the sentence first above described, and a portion of which Wright was serving in said Illinois penitentiary at the time said Federal sentences were given, and which said Illinois sentence has not expired.

And it appearing from the said petition that the two said sentences of the United States District Court for the Eastern District of Illinois, upon commitments thereon the said Warden Johnston claims the right to hold the custody of said Wright, are sentences which have not yet begun to run and are sentences which do not entitle the said Warden to hold the custody of the said prisoner.

Now, Therefore, I, William Denman, command you that you have the body of Cecil Wright by you [112] restrained of his liberty and detained in your custody, as it is said, by whatever name the same Cecil Wright may be called or known, together with the day and cause of his being taken and detained by you, before me in my chambers, Room 316 Post Office Building, Seventh and Mission Streets, San Francisco, California, on the 10th day of October, A. D. 1942, at 11 o'clock A.M. of said day; then and there to do, submit to and receive whatsoever I shall then and there consider in that behalf.

Witness, William Denman, Judge of the Circuit Court of Appeals, this 7th day of October, 1942.

/s/ WILLIAM DENMAN

United States Circuit Judge

[113]

In the United States Circuit Court of Appeals
For the Ninth Circuit

Before Honorable William Denman, United States
Circuit Judge for the Ninth Judicial Circuit.

IN THE MATTER OF THE PETITION OF
CECIL WRIGHT TO WILLIAM DENMAN,
UNITED STATES CIRCUIT JUDGE FOR
THE NINTH JUDICIAL CIRCUIT, FOR A
WRIT OF HABEAS CORPUS ADDRESSED
TO JAMES A. JOHNSTON, WARDEN,
UNITED STATES PENITENTIARY, AL-
CATRAZ ISLAND, CALIFORNIA.

RETURN TO WRIT OF HABEAS CORPUS

Comes now James A. Johnston, Warden of the
United States Penitentiary, Alcatraz Island, Cali-
fornia, and for return to the writ of habeas corpus
issued herein on October 7, 1942, shows as follows:

I.

That the person hereinafter termed "the peti-
tioner" on whose behalf the petition for writ of
habeas corpus was filed, is detained by the respond-
ent as Warden of the United States Penitentiary
at Alcatraz Island, California, under and by virtue
of the judgments and sentences duly issued by the
District Court of the United States for the East-
ern District of Illinois in cases numbered 11032
and 11074 and the transfer order issued at Wash-
ington, D. C. by Frank Loveland, Acting Assistant
Director of the Bureau of Prisons of the Depart-
ment of Justice on July 18, 1941. [114]

II.

That this is the fourth petition for writ of habeas corpus filed by the petitioner, three previous petitions having been filed before the District Court of the United States for the Northern District of California in cases numbered 23581-S, 23611-S and 23647-S; that all three of said prior petitions filed before the District Court of the United States for the Northern District of California were denied; that all the allegations of the present petition and the questions raised therein are identical to those alleged and raised in the petition filed before the United States District Court for the Northern District of California in the aforesaid case No. 23647-S.

III.

That the entire record in the aforesaid case No. 23647-S before the United States District Court for the Northern District of California is hereby referred to and incorporated by reference in this return as though set forth herein in full.

IV.

That in said case No. 23647-S referred to in the paragraph immediately above, the writ of habeas corpus issued therein was discharged on August 20, 1942, and on September 11, 1942, the aforesaid District Court made and entered its findings of fact and conclusions of law, and the petitioner has not petitioned for or sought the right to appeal from the said order of said District Court.

Wherefore respondent prays that the petition for writ of habeas corpus be denied, that the writ

of habeas corpus issued herein on October 7, 1942, be discharged, and that the [115] petitioner be remanded to the custody of respondent.

Dated: October 10, 1942.

JAMES A. JOHNSTON

Warden, United States Penitentiary, Alcatraz Island, California.

[Endorsed]: U. S. Penitentiary, Alcatraz Island, Calif. Rec'd. Oct. 9, 1942. [116]

[Title of Cause.]

SUPPLEMENTAL RETURN TO WRIT
OF HABEAS CORPUS

Comes now James A. Johnston, Warden of the United States Penitentiary, Alcatraz Island, California, and for a supplemental return to the writ of habeas corpus issued herein on October 7, 1942, respectfully asks that the Exhibit hereto annexed and marked Exhibit "A" be incorporated in the records of this proceeding as a part of the return to writ of habeas corpus heretofore filed herein as though the same had therein been set forth in full.

Dated: This 15 day of October, 1942.

JAMES A. JOHNSTON

Warden, United States Penitentiary, Alcatraz Island, California

By E. J. MILLER

Associate Warden,

Acting Warden [117]

EXHIBIT "A"

Department of Justice
United States of America

DEPARTMENT OF JUSTICE

October 9, 1942

Pursuant to Title 28, Section 661, U. S. Code (Sec. 882, Revised Statutes), I hereby certify that the annexed papers are true copies of the original record in this Department of a letter addressed to Joe E. Montgomery, Warden, Illinois State Penitentiary, Menard, Illinois, by W. T. Hammack, Acting Director Bureau of Prisons, Department of Justice, dated October 6, 1939, and a letter addressed to said Mr. Hammack by the said Mr. Montgomery, dated October 12, 1939.

In Witness Whereof, I have hereunto set my hand, and caused the seal of the Department of Justice to be affixed, on the day and year first above written.

[Seal]

W. T. HAMMACK

Acting Director,

Bureau of Prisons [118]

State of Illinois

Henry Horner, Governor

Department of Public Welfare

General Office, Springfield

A. L. Bowen, Director

Mrs. Blanche Fritz,

Assistant Director

John C. Weigel,
Administrative Assistant
Joseph E. Ragen,
Superintendent of Prisons
A. J. Brumleve,
Superintendent of Charities
James P. Cox, Fiscal Supervisor
Paul L. Schroeder, M.D., Criminologist
H. Douglas Singer, M.D., Alienist
W. C. Jones, Supervisor of Paroles

ILLINOIS STATE PENITENTIARY

Menard Branch

Joe E. Montgomery, Warden
Menard, Illinois

October Twelfth, 1939

Mr. W. T. Hammack, Acting Director
Department of Justice,
Bureau of Prisons,
Washington, D. C.

Dear Sir:

This has reference to your letter of October 6th relative to Cecil L. Wright, Register No. 15386, an inmate confined in this institution.

I wish to advise you that contrary to the statement made in his letter to you, the fact that he does have a detainer on him will be an important factor in his being given a parole much sooner than if he had no "Hold" on him by the Department of

Justice, and the Parole Board will take this into consideration when his case is reheard.

Your department will be advised thirty days prior to his release from this institution so that you may have an officer on hand to take him into custody.

Yours very truly,

JOE E. MONTGOMERY

Warden

JEM/u [119]

October 6, 1939

Mr. Joseph E. Montgomery

Warden

Illinois State Penitentiary

Menard, Illinois

Re: Cecil L. Wright, No. 15386

Dear Sir:

We have a letter from your inmate Cecil L. Wright, No. 15386, dated September 3, 1939, addressed to the United States Attorney General, stating that he is serving a state sentence of from one year to life imposed on July 26, 1930; that on September 17, 1930, he was sentenced in the Federal District Court for the Eastern District of Illinois to a total of fifteen years imprisonment, ordered to begin upon expiration of service under the state sentence. He states that a Federal detainer has been filed against him at the Illinois State Penitentiary for the purpose of taking him into custody upon his release from state imprison-

ment and he advises that he could secure release on parole provided this detainer were removed.

From this letter it appears that the State Parole Board will not grant him a release while this detainer is on file.

There is no authority by which the detainer in question can be removed because it is the only insurance that the United States Marshal at East St. Louis, Illinois, who holds the commitment papers under the Federal sentence, will be informed by you of the date of Wright's release. It is not clear why the Federal detainer is regarded as a bar by the State Parole Board to the prisoner's release on parole. If such release were ordered by the Board, the detainer would induce you to promptly notify the United States Marshal, who would call at your institution and take Wright into custody for service of his Federal sentence.

Will you please advise the inmate of this reply to his letter.

Very truly yours,

W. T. HAMMACK,

Acting Director

AEG—tf [120]

[Title of Court and Cause.]

TRAVERSE TO RESPONDENT'S SUPPLEMENTAL RETURN TO WRIT OF HABEAS CORPUS.

Comes now the petitioner, Cecil Wright, and for his traverse to the respondent's supplemental return to the Writ of Habeas Corpus, represents and shows as follows:

The petitioner reasserts, realleges and reaffirms all the matters and things heretofore set forth in the said petition, as well as the following facts.

Petitioner traversing respondents exhibit "A", represents and shows: That the two letters (exhibit "A") are of no importance as affecting the conditions under which petitioner was paroled by the Illinois State Parole Board.

The conditions under which petitioner was paroled are of record in the parole office at Springfield, Illinois, and not of record in the office of the Acting director of the bureau of the United States Prison.

The respondent's counsel stated that he was obtaining the records of conditions of the parole under which petitioner was placed through the action of the Illinois State Parole Board. However the respondent shows two letters (exhibit "A") which have been taken from the files of the department of justice in Washington, D. C. These two letters (exhibit "A") cannot be considered as legal evi-

dence as affecting the conditions under which petitioner was paroled by the Illinois Parole Board.

In the petition for a writ of habeas Corpus the petitioner challenged the jurisdiction of judgments of convictions and sentences issued out of the United States District Court for the Eastern District of Illinois.

In the petition for a writ of habeas corpus the petitioner raised five points which challenged the trial court's jurisdiction. The first four points raised in the petition challenged the trial Court's proceedings under which petitioner- [121] er was convicted.

The fifth point raised by petitioner is the point at issue; under the fifth point petitioner alleged that he was tried, convicted and sentenced by a state court of Illinois to serve not less than one year and no more than a lifetime. The petitioner having been sentenced by the state Court would remain a state prisoner after his release by the state parole board and subject to the judgment of the State Court. The State Court's judgment provided * * * "that part of the sentence was to be served in the state penitentiary and a part on parole."

The petitioner was committed to the Southern Illinois State Penitentiary, Menard, Illinois, on July 26, 1930.

That fifty two days after petitioner's incarceration in the Illinois State Prison, the United States District Court for the Eastern District of Illinois imposed sentences totaling fifteen years with the

provisions "that the sentences shall commence upon the expiration of the sentence which the said defendant is now serving in the Southern Illinois Penitentiary."

On October 31, 1939, petitioner was released from the State Penitentiary by action of the Illinois State Parole Board with the provisions "that he serve an Illinois State parole."

That on the date of October 31, 1939, the United States Marshal from the Eastern District of Illinois apprehended petitioner and over petitioner's objections conveyed him out of the said State of Illinois into the State of Kansas where petitioner was imprisoned in the Leavenworth, Penitentiary.

Under the trial court's mandate the United States Marshal could not execute the writs of commitments until petitioner had served an Illinois state parole; the Illinois state parole subjects the petitioner to the state Court's judgment until discharged by due course of law. [122]

In (16 C. J. 1369) at page 1064, paragraph (b) Under Illinois statute. (1) Convict has no right to demand that he be discharged before expiration of maximum term. *Peo. v. Connors*, 126 N. E. 595; *Peo. v. Hannon*, (Ill) 126 N. E. 596; *Peo. v. Hussar*, (Ill) 126 N. E. 596. (2) Unless executive decides to shorten term of imprisonment fixed by judgment of Court, sentence does not end when minimum term has been served. *Peo. v. Connors*, (Ill) 126 N. E. 595; *Peo. v. Hannon*, (Ill) 126 N. E. 596; *Peo. v. Hussar*, (Ill) 126 N. E. 596.

Mr. Zirpoli: No, that has in it the sentence of Judge Lindley.

The Court: I want a copy of the Illinois sentence.

Mr. Cecil Wright: Exhibits R and S in the petition.

Mr. Zirpoli: You have it in your original petition?

Mr. Wright: Yes. [124]

The Court: Take it out, will you?

Mr. Zirpoli: I might state to your Honor that one of the points that the Respondent wishes to make with relation to this case, and which does not necessarily go to the merits of the petition, is the question of the propriety, or a determination of whether or not this Court, your Honor, I should say, should now entertain the present petition, and I have some authorities on which I would predicate the position that the Respondent takes in that regard.

Mr. Wright: I object to that, our Honor, because the law is to the contrary. Your Honor has equal authority to grant petitions of writs of habeas corpus as a Circuit Court Judge, individually.

The Court: That is not the question, I take it. What is the ground for your objection that, assuming I have the power, I should not exercise it?

Mr. Zirpoli: I am fully familiar, of course, with the provision in the Code which provides that the several judges of the Supreme Court, the several

judges of the Circuit Court of Appeals, and the District Court, within their jurisdiction, shall have the power to grant writs of habeas corpus for the purpose of inquiring into the cause of restraint of liberty. That is the present 452. It read differently prior thereto and was amended. Mr. Wright has cited a case in support of his petition on the original reading of the section, which provided for the Circuit Judges and not the Circuit Judges of the Court of Appeals, and did not have the concluding paragraph with relation to the filing of the papers in the District Court. However, the Lamar case was followed later by *Ex parte Craig*.

The Court: What is the citation? [125]

Mr. Zirpoli: The citation of *Ex parte Craig*—

The Court: No, the Lamar case.

Mr. Zirpoli: 274 Fed. 177 was the original case.

The Court: This is 282 Fed.

Mr. Zirpoli: I did not bring 274, because I want to show from 282 Fed. 138 the Circuit Court of Appeals, in passing upon the writ which was issued by Judge Manton, as a Circuit Judge, then concluded that the Circuit Judge did not have the power to issue the writ, and that decision was sustained on appeal to the Supreme Court in 263 U. S. 255.

I cite that now to show that the conclusion now that the petitioner makes that the right to have your Honor pass upon this is more or less a mandatory right, and a mandatory duty did not follow then. And at that time it might be said that the

Circuit Court Judge did not have the power at all, under the Supreme Court decision.

The Court: Was that a final decision?

Mr. Zirpoli: The final decision was it had to be as a District Court Judge, or a Circuit Court Judge acting in its capacity as a District Judge.

The Court: Under the present law, as I understand, the Circuit Judge within the Circuit has to entertain a writ of habeas corpus with the same promptitude that a District Court must.

I will say, Mr. Wright, your petition followed me around through the mountains until I just got it when I returned here.

Mr. Wright: I am very sorry.

The Court: And I got to work on it, and yesterday I received a letter from you complaining it had not been acknowledged. The acknowledgment was the writ. That came to me yesterday, although [126] you wrote it on the 1st. I was in Los Angeles.

Mr. Wright: I am very sorry.

The Court: You need not be sorry about it. You have a perfect right to press the matter. Any party presenting a habeas corpus petition is entitled to have it entertained. But I happened to be in the mountains. That is why you just did not find me.

Mr. Zirpoli: Now, Judge, if I may get down to more recent cases——

The Court: You have not made your point yet. You started out to say you intended to urge that I had the power——

Mr. Zirpoli: That you have the power.

The Court: But that I should refrain from exercising it?

Mr. Zirpoli: You should refrain from exercising it on these grounds, your Honor. The first ground is, the District Court is available to the petitioner. Even though there is this right in the Circuit Court Judge in his discretion to hear the petition, where the District Court is available, and where, in addition thereto, the peculiar circumstances exist that exist in the present situation, where the petitioner has petitioned the District Judge, and the Judge has, on the very same and identical questions involved, here, ruled adversely to the petitioner, and the petitioner's time has not expired for appeal, under those circumstances I feel he should be required to petition the Judge in this District Court for the right to appeal to the Circuit Court of Appeals; and I predicate my conclusion on a line of cases.

The Court: The District Court decision is final?

Mr. Zirpoli: The District Court decision is final, but there is the right of appeal. Then I have the Pagett case——

The Court: Just a moment. Suppose he does not desire to [127] appeal?

Mr. Zirpoli: Suppose that it is not desired to appeal?

The Court: Suppose he does not desire to appeal.

Mr. Zirpoli: Then, your Honor, as the Pagett

case holds, which was decided in this Circuit, where there are repeated petitions being filed, the Court can deny the petition because the identical issues have been raised.

The Court: Suppose it should happen that I did not agree with the other judges?

Mr. Zirpoli: I recognize that possibility. That would leave me in an entirely different position.

The Court: As I take it, it is admitted, I think, by Mr. Wright, that he has filed several petitions for writs of habeas corpus. You will admit, Mr. Wright, you still have time to appeal and do not intend to appeal?

Mr. Wright: Yes, your Honor.

The Court: But you are relying on this writ that you addressed to me?

Mr. Wright: Yes, your Honor. I might state that on a prior petition to the District Court I attempted to appeal to the Circuit Court of Appeals, but that was disregarded.

The Court: That was not your last one?

Mr. Wright: No, that was not the last one.

The Court: As I understand it, you referred me in your petition to the records of these other cases, and included them. As I understand, in the second case you had there you sought to appeal that case.

Mr. Wright: Yes, your Honor.

The Court: And the Court decided you had no merit in the ground of appeal and therefore the Court did not allow the appeal. [128] In the last

case, as I understand it, the Court has not denied you the right to appeal, but you do not intend to appeal from that, anyway, is that correct?

Mr. Wright: Yes, your Honor.

The Court: Mr. Zirpoli, I think I have got to examine this man's petition.

Mr. Zirpoli: Might I, your Honor, call your Honor's attention to these other cases, either for the purpose of reading them, or your Honor can read them if your Honor desires. I wanted to call these cases to the attention of your Honor, either for the purpose of reading them to your Honor now, or giving your Honor the citations for later reading.

The Court: Give me the citations for the record, and the Clerk need not put in the record what you read, unless you want it there.

Mr. Zirpoli: Whatever will be more convenient for your Honor in considering the matter later.

The Court: You do not appeal on the record before me, you know, if I happen to decide adversely to you.

Mr. Zirpoli: The first case, going back historically, was the Davis case. However, there was not a direct treatment with the problem; but the first case that deals directly with the situation, as I am endeavoring to present it now, was *United States Ex rel. Bernstein v. Hill*, which is reported in 71 Fed. (2d) 159, and there the Court said, speaking of the very section involved:

“28 U.S.C.A., Section 452 confers power upon the judges of the Circuit Court of Appeals to grant writs of habeas corpus. This does not mean, however, that a judge of the Circuit Court of Appeals is bound to entertain such application when it might have been made to a judge of the appropriate District Court. [129] In the instant case there were no circumstances alleged which would make it necessary for a judge of the Circuit Court of Appeals to allow the writ, since the appellant might have applied to either of two district judges within the Middle District of Pennsylvania, where the appellant is confined. Neither is there an allegation in the petition that an application had been made to either of these judges. A refusal by Judge Woolley to take jurisdiction did not deprive the appellant from making an application to a judge of that district. Moreover, we find no merit in the grounds relied upon by the appellant in the petition for writ of habeas corpus. The appellant was tried and sentenced upon an indictment charging him with violation of 18 U.S.C.A., Section 338, which forbids the putting of a letter or package in the post office, or the taking out of a letter or package from the post office in the furtherance of a fraudulent scheme. Each individual act of taking out or putting in a letter in furtherance of a scheme to defraud is a distinct and separate

violation of the statute. For that reason each violation may be separately punished."

The Court: In that case the merits or the propriety of the law of the charge was appealed from.

Mr. Zirpoli: Yes, this is the first case, I say, historically.

The Court: Now, in this case there has been an application, as I understand it, to all the district judges in this district who are alive.

Mr. Wright: That is true, your Honor.

Mr. Zirpoli: I have a point that I would like to make in that regard, but I want to read further from the authorities.

The next case is a case in this Circuit, James W. O'Brien [130] vs. E. B. Swope, Warden, United State Penitentiary, McNeil Island, Washington, 106 Fed. (2d) 471. This is Judge Wilbur speaking:

"Petitioner asks for a writ of habeas corpus. He alleges that he is imprisoned in the United States Penitentiary at McNeil Island, Washington, by reason of a judgment and commitment issued by the United States District Court of Oregon. He alleges that he pled guilty, but claims that he was denied assistance of counsel. A prior application for a writ of habeas corpus was made to the United States District Court for the Western District of Washington and denied. The petitioner also

petitions for the allowance of an appeal from the order of the District Court refusing to issue a writ of habeas corpus.

“The application to the Senior Circuit Judge for a writ of habeas corpus is denied.”

Then comes the case of *Whitaker v. Johnston*, 85 Fed. (2d) 199. This is a case where the petition was addressed to the Senior Judge. Judge Wilbur is speaking in the case:

“Petitioner has presented a petition for writ of habeas corpus. He is not represented by an attorney and requests me to appoint an attorney to represent him. This I have no power to do.

“Petitioner has been informed that the petition should be filed in the first instance in the District Court of the United States. He, however, desires that this petition be filed and that I act upon the same. The petition is denied upon the ground it should be made in the first instance to the District Court. It has already been pointed out that this is the appropriate procedure. * * * As this petition is denied solely upon the ground that the application should be made in the first [131] instance to the District Court of the United States, I do not comment further upon it.”

Mr. Wright: I believe those cases that he has just read, your Honor, are without merit as to my contention. My application here was addressed to

your Honor and not to the Circuit Court of Appeals.

Mr. Zirpoli: There are a number of other cases that are along the same line that I would like to read from.

The Court: Have you any case where the petitioner to the Circuit Court has exhausted all the District Judges of the District in which the prisoner is incarcerated?

Mr. Zirpoli: I would say no, I have not, but I will say there has not been an exhaustion here, because the last petition which was filed, as the record shows, is a petition that has raised all the identical questions which are raised now. A judge decided that case and decided adversely to the petitioner, and the petitioner has the right to appeal to the Circuit Court, and I feel that the Court, in the exercise of its discretion now, should require him to exercise that right of appeal rather than to petition for a writ of habeas corpus on the same identical grounds previously presented, and the basis for my conclusion on that ground I predicate upon the Pagett case, which is a case in the Circuit Court of Appeals of the Ninth Circuit.

Mr. Wright: I have read the Pagett case.

Mr. Zirpoli: 95 Fed. (2d) 839. The Court said:

“The district court denied the application upon the ground that two similar applications by the petitioner already have been heard and denied. In the order denying the present application the court stated that the

testimony adduced by the petitioner upon the previous applications did not sustain the [132] allegations of the petition in that the only facts alleged in the petition which gave this court jurisdiction in the premises were not true, and this was established by the record of the superior court in which the petition was tried. The court further stated in its order that the matters and things presented in the present petition were the same as those considered by the court on two previous petitions by the petitioner, one denied June 8th, 1937 and the other December 30th, 1937.

“In denying the present petition the court properly took judicial notice of its own records. Petitioner had a right of appeal but did not exercise it. In view of the two previous hearings wherein the court finds the same issue has been presented, it was not an abuse of discretion to deny a third application based on the same ground. The opportunity to be heard upon the second application for a writ of habeas corpus before the same judge or another judge of the same jurisdiction who had denied a prior similar application justified the denial of the renewed application. In *Salinger v. Loisel*, 265 U.S. 224, the Supreme Court held that a prior refusal to discharge a petitioner on an application for writ of habeas corpus was a matter to be considered upon a subsequent application made on similar

grounds. The court cited the case of *Ex parte Cuddy*, 40 Fed. 62, rendered by Mr. Justice Field while on circuit. See all other cases cited by the Supreme Court in *Salinger v. Loisel*, *supra*."

I cite these cases and the run of authorities, including the *Sweetney* case, which I did not read to your Honor, reported in 121 Fed. (2d) 445, which is the most recent case, in which the Senior Circuit Judge says:

"The Senior Circuit Judge has consistently followed the [133] decision of Circuit Judge Woolley, of the Third Circuit Court of Appeals, approved by that court, wherein the Circuit Judge declined to issue the writ of habeas corpus and thus disqualify himself from acting on an appeal from the final order in the proceedings where no reason is shown by the applicant could not, with equal propriety and facility, be presented to a United States District Judge or district court."

And, incidentally, *Sweetney* had heretofore filed two petitions in the District Court, so that his petition in the Circuit Court here, addressed to Judge Wilbur, was a petition following prior petitions which had been filed in the District Court.

I cite those cases to show that when an application is made to a Circuit Judge for a petition for a writ of habeas corpus, the position of the Circuit Judge becomes equal to that of a District

Judge, and therefore, he should give weight to a ruling of a judge of equal jurisdiction on an identical statement of facts and identical issues of law involved, and in giving equal weight he should not, I feel, entertain an original petition which has no more effect than an appeal would have, because the original petition is then in a sense being used as a form of appeal from the decision of a judge of equal jurisdiction.

The Court: That would be true of each successive petition, wouldn't it?

Mr. Zirpoli: It would be true of each successive petition——

The Court: If he has the right——

Mr. Zirpoli: He has the right——

The Court: To have successive petitions.

Mr. Zirpoli: Yes, but in *Salinger v. Loisel* they have given discretion to the District Judge to deny a second petition if there is no difference in the grounds recited, and that form of [134] procedure has been more or less universally followed, and it is only when new questions are raised——

The Court: Suppose, Mr. Zirpoli, you have a petition consisting of 67 pages which has passed under the eye of another judge, or two judges, and they do not get something—just don't get it. Suppose it is not argued or clearly presented, but once you see it, it sticks out like a sore thumb in the petition. Now, suppose the third judge, or the tenth judge sees that which nobody else has seen, a point which has not been impressed by argument;

if he sees that, should he say, "I am going to rely on the other person's decision," if he does not think it is right? The whole purpose of the writ is to get the independent judgment of the judge who sees it, on what he sees there. Suppose, now, something is perfectly clear to me that all three of the other judges had not seen, something in the petition that gave him the right to be free from incarceration. Would it be proper for me to say, "Because these other judges have failed to see it, I am going to shut my eyes to it"?

Mr. Zirpoli: I believe that the answer in that instance arises in the fact that there are still at least thirty days within which to take an appeal, and under the circumstances, your Honor, rather than facing your Honor in the sense of a court of appeal, reversing, you might say, their ruling, should require, instead of entertaining his petition at this time, to exercise his right of appeal.

Mr. Wright: I do not believe there is any mandatory provision that requires a petitioner to appeal if he does not wish to, and Mr. Zirpoli has the same opportunity to appeal from the judgment that your Honor should render.

The Court: To be frank with you, Mr. Zirpoli, I am going to [135] rule that I have no right to compel this man to appeal in another proceeding if he does not intend to appeal. I will accept his viewpoint of it and assume that the decision is final as to him, and he is asking me now to exercise my obligation as a judge to whom an appeal has been

made for a writ independently, and that I propose to do. Now, you have no counsel?

Mr. Wright: No, your Honor.

The Court: You have a plea here, offered as evidence material in other proceedings formerly pending in the District Court. You have pleaded that the sentence in the Illinois Court has not terminated.

Mr. Wright: That is right.

The Court: I am wondering whether or not there is any denial of that here.

Mr. Zirpoli: I am relying on the entire record in the other case before Judge St. Sure.

The Court: I am talking about one of the sentences, one of these records, here.

Mr. Wright: It was filed as an exhibit in the District Court. It would not be in my original application.

The Court: Mr. Zirpoli, here is the sentence.

Mr. Zirpoli: I would also like to put in the record the case of Brosius v. Bothkin, which is a case of the Circuit Court of Appeals for the District of Columbia, in which the Circuit Judge, the court said there that the petitioner should be required to go to the District Judge, rather than even to address a judge of the Circuit Court.

The Court: I am in accord with that. I have done the same thing, refused to consider a writ where the mill of the district judges had not been run. But here there have been three at- [136] tempts of the district judges.

Mr. Zirpoli: I want to make one argument without conceding my objections, because I would like to have an opportunity for time to get whatever additional records are necessary, and I have a wire that some records are being sent to me in connection with this application, and the conclusion on the merits.

The Court: This is the petitioner's Exhibit D, filed in the case of the District Court, 23611-S. As I understand, Mr. Zirpoli, this may be regarded as in evidence here, and will be copied into the record. I might hand it over to the Reporter for copying. I want to read the part that particularly interests me:

(The Court then read the matter appearing on page 16 of this transcript, lines 5 to 21 inclusive.)

"State of Illinois,

"Clark County—ss.

"At a regular Term of the Clark County Circuit Court, begun and holden at the Courthouse, in the City of Marshall, in and for the County of Clark, on Monday, the 14th day of July, A.D. 1930, and on the sixth day of said Term, being the 25th day of July A. D. 1930.

"Present: Hon. S. Murray Clark, Judge; Russell L. Riley, Clerk; Victor C. Miller, States Attorney; Harry O. Coldren, Sheriff.

Attest.....Clerk.

“PETITIONER’S ‘EXHIBIT D.’

“239

The People

vs.

Robert Raymond, Mark Bowles, Cecil Wright,
Monte Christe and Joseph Hartman,
Robbery.

“(The paragraph concerning Cecil Wright
is as follows:)

“And now again on this day comes the People of the State of Illinois by Victor C. Miller, State’s Attorney, and the said Defendant, Cecil Wright in his own proper person as well as by his Attorney Grendel F. Bennett also comes and issues being joined it [137] is the order of the Court that a jury come. Whereupon come the jurors of a jury of Twelve good and lawful men, to-wit: R. M. Bennett, Newton Brosman, J. B. Young, Raymond Lindley, Ed Cunningham, Fred McFarland, Bird Thompson, Marion Bartram, Cabot Hill, W. Ellington, B. F. Setzer and Wm. Cline who being duly selected, tried and sworn proceed to try said cause and the jury having heard the opening statements, all the evidence adduced the argument of counsel together with the instructions of the Court, retire in charge of a sworn officer to consider of their verdict, and now comes again the Jury in open Court and for their verdict say: We the Jury find the defendant Cecil Wright guilty of Robbery in manner and form as charged in the indictment, and we further find from the evidence that at the time

of the commission of said robbery the defendant was armed with a dangerous weapon, to-wit: with a colts 45 Automatic.

“And we further find from the evidence that the said defendant, Cecil (Tuck) Wright is about the age of twenty four (24) years.

“And now comes the defendant, Cecil Wright, into open Court by his counsel Grendel F. Bennett as well as in his own proper person and makes motion for a new trial and the Court being fully advised in the premises it is the Order of the Court motion for a new trial be overruled and denied and now comes again the defendant Cecil Wright by his counsel and makes motion in arrest of Judgment and it is the Order of the Court motion be denied and Defendant thereupon excepts.

“Now again on this day come the said People of the State of Illinois, by Victor C. Miller, State's Attorney and the said Defendant, Cecil Wright in his own proper person, as well as by his counsel, Grendel F. Bennett, also come and now neither the said defendant, Cecil Wright, nor Grendel F. Bennett, his counsel [138] for him, saying anything further why the Judgment of the Court should not now be pronounced against him on the verdict of guilty of Robbery in manner and form as charged in the Indictment heretofore rendered in this cause.

“Therefore, it is Ordered and adjudged by the Court, that the said defendant, Cecil Wright, be taken from the Bar of this Court to the Common

and a right which is not personal to him, and I quote the Wall case for that point. I might read from that case. I might state before reading it some of the factual matters which appear in the record, and which go on to say:

“Represented by counsel, he entered a plea of guilty and was sentenced on the first count to serve a term of three years [140] in the penitentiary, to commence at the expiration of a sentence of from fourteen to twenty-eight years in the Penitentiary of the State of Louisiana which he was then serving. The imposition of the sentence on the remaining counts was suspended for a period of five years.”

He had not begun to serve the 14 to 28-year term. “About nine months later a commitment issued on such judgment and sentence; petitioner was delivered to respondent, as Warden of the Penitentiary at Leavenworth, under such process; and he is being detained under it.”

The Court goes on to say, “Petitioner contends that the United States Court was without jurisdiction to impose sentence upon him while he was serving the term in the Penitentiary of the State, and that for such reason the sentence is void. When the court of one sovereign takes a person into its custody on a criminal charge he remains in the jurisdiction of that sovereign until it has been exhausted, to the exclusion of the courts of the other sovereign. That rule rests upon principles of

comity, and it exists between Federal and State courts. * * * But either the Federal or a State Government may voluntarily surrender its prisoner to the other without the consent of the prisoner, and in some circumstances the question of jurisdiction and custody is purely one of comity between the two sovereigns, not a personal right of the prisoner which he can assert in a proceeding of this kind."

The Court: Mr. Zirpoli, the question there was whether or not the United States had the power to try this man without being surrendered by the State of Illinois. That case you just cited presents a case where the sole question is, having sentenced him, has the sentence begun to run? That is the single question [141] here. Not the power of the United States to decline to sentence him, but whether the sentence that has been rendered has begun to run against him.

Mr. Zirpoli: I quote that primarily on this question of comity on the fact that you are imprisoned under one rather than another. When you start service of the sentence is a matter that no longer is personal to you.

The Court: The thing that is personal to him is whether or not his sentence has begun to run. The sole question before me at this time, at this moment of the argument, is whether he is being held by the Warden on the Island on a sentence that has not begun to run.

Mr. Zirpoli: That depends on an interpretation of the language of the sentence of Judge Lindley, and on that I have some cases I would like to cite. Of course, the first case is the case of *Ex parte Lamar*, where the Court said:

“It is there clearly expressed that the judge fixed the commencement of service after the expiration of Lamar’s term at Atlanta. No authority supports the claim that Judge Cushman was prohibited from fixing the date of the commencement of this term to such future date. To hold otherwise would be making a mockery of the law, and to stultify the course of justice.”

Of course, that is a mild case, and not strong in our point.

The Court: That was a case where the question was whether or not the judgment on conviction could commence at the expiration of some other sentence. That question is not involved in the case that is now here. This situation, here, admits that the sentences imposed by the court commenced at a future date, but whether the date of commencement has arrived is the sole issue [142] stated in the writ, itself.

Mr. Zirpoli: And for that reason I would like to come on down to the *McNealy* case, which is a case in this Circuit, with which your Honor is quite familiar, since your Honor was one of the Judges sitting in that case. However, without endeavoring to interpret your Honor’s intent in that case, and

possibly interpreting, in that event, the opinion of Judge Stephens, who wrote the opinion, I wish to quote the following language in that case. Speaking of the sentence, "It is, therefore, ordered and adjudged by the Court that James McNeeley, alias James McNealy, be, and he is sentenced to imprisonment in the Atlanta Penitentiary for a period of three years, the serving of said sentence to begin at the expiration of the sentence he is now serving for the Southern District of Florida."

Then the Court goes on and says, "It has often been held by the courts that when two or more sentences are imposed against the same person to imprisonment in the same institution, or the same type of institution, the presumption is that they are to be served concurrently rather than consecutively, unless the contrary clearly appears. Any reasonable doubt or ambiguity on that part is resolved in favor of the defendant. On the other hand, a judgment must be reasonably construed in accordance with the intent of the trial court, if the language discloses such intent clearly and without doubt or obscurity."

Now, I believe that the language of Judge Lindley clearly indicates an intent that the Federal sentence shall run at the expiration of the sentence he is now serving in the Southern Illinois Penitentiary, meaning the sentence he is serving in the institution, itself. Therefore, you could reasonably conclude that he meant nothing other than the Fed-

eral authorities [143] would take over and have his Federal sentence commence from the time he was released from the Southern Illinois Penitentiary, and I think since the intent—that is, the feeling of the respondent is since the intent——

The Court: Mr. Zirpoli, when I first examined the sentence I had the inclination or viewpoint that you expressed, but if that were the case, it means that Judge Lindley intended to take this man out of the custody of the Illinois people when he was under sentence there, part of which was served on parole. Now, it is inconceivable to me that a Federal Judge intended to put this man in a Federal Penitentiary, although he was still serving a sentence under parole in the State of Illinois. It is inconceivable to me that the Judge would say, “I don’t care what the Illinois sentence is, whether he is out of that penitentiary or not, if he is under parole or not. Just seize him and put him in some Federal Penitentiary.” It is also inconceivable to me that a sentence would be pronounced by a Federal Judge which relied on the uncertainty of the State of Illinois surrendering the prisoner in the middle of a sentence he had not served for, serving it under parole, and would turn him over to the United States. I think Judge Lindley was looking for certitude that the State of Illinois would surrender this man when he came out of the penitentiary. So, my conclusion is that the sentence of the Illinois Penitentiary had to be served, and it

could only terminate by his serving it both in the penitentiary and outside. In other words, the words "in the penitentiary" were descriptive of the sentence.

Mr. Zirpoli: Replying to that, that very thing is being done every day. Hundreds of men throughout the nation who were on parole under one jurisdiction or another are being sentenced by [144] another jurisdiction. For instance, in our Federal Court——

The Court: I meant to say the propriety of sentencing him while he is on parole. I am talking about the propriety of construing a sentence of a Federal Court on the theory that Illinois is going to surrender this man before he has terminated his sentence, to the United States for incarceration in the Federal Penitentiary. It may be done by future negotiations; it is not something that happens at the time the Federal sentence is imposed.

Mr. Zirpoli: Yet the Judge knows, and we all know, that in almost every case in which a punishment is imposed, there is the right of parole.

The Court: There is no record proof of that.

Mr. Zirpoli: Here there is a conditional release, and just as the Court with propriety can sentence a man who is under parole, it can with equal propriety look forward to the commencement of his other sentence at the time he is released from the institution and is no longer subject to physical restraint. What the Court had in mind was the

physical restraint on Cecil Wright, and the physical restraint on him ceased to run when he was no longer under physical restraint under the Illinois sentence. I do not think we can conclude that the Court contemplated anything in its mind but physical restraint. The very nature of the judgment, the wording of the judgment, convinces the respondent that that is what it had in mind.

The Court: It refers to a judgment. It refers to a sentence of Illinois, which speaks of the custody of the man imprisoned, the terms of the sentence. As I understand, it is not disputed or denied that this man was sentenced in Illinois for not less than one year and up to life. That was, as I understand it, the [145] sentence that was imposed and referred to in the sentence which you just read from the Illinois court, is that correct?

Mr. Zirpoli: Yes, I believe that is correct. I have one other thing I want to make, and that is this: We do not know—and that is one of the documents I am endeavoring to secure—the conditions under which the petitioner was released from parole. In other words, if the Illinois authorities actually surrendered him to the Federal Government, and if, in so far as the sentence is concerned, there was a surrender, at least for the purpose of commencing the sentence, the Federal sentence, and that the Illinois authorities were relinquishing their hold in their jurisdiction to continue to detain him under their sentence to enable the service of the Federal sentence.

The Court: Assuming that to be, the sentences of the United States District Court of Illinois do not begin to run prior to the expiration of the Illinois sentence, and upon surrender to the United States. There is nothing said about that. The Illinois Federal sentence begins to run at the termination of the Illinois State sentence. Now, the sentence has not terminated by surrender, prior to its termination, to somebody else for punishment elsewhere. If that sentence of the Illinois District Court had read upon his release from incarceration, it would have marked the beginning of this sentence, but it is not so drawn, and in that connection, with the prisoner's offer of the letters from that Board——

Mr. Wright: Pardon and Parole (handing a document to the Court).

The Court: In this connection I read from the part of the record which you referred to and include in your return to the writ a letter from Ralph B. Phillips, Chief Clerk of the Division [146] of Correction of the Department of Public Safety, State of Illinois:

“Mr. Cecil Wright, Box No. Pub. 79 Alcatraz, California.

“Dear Sir: Your letter of August 20, 1942, has been received. As I advised you in my letter of October 30, 1941, the one to which you refer, which was written in reply to your letter of October 21, 1941, whenever you are released from Alcatraz you

will be required to do an Illinois parole, and I suggest that you communicate with the Parole Officer, Illinois State Penitentiary * * *."

That letter is dated August 24, 1941. Another letter appearing in this same record, addressed to Mr. Cecil Wright, is dated August 25, 1942, and signed by J. L. Lawler, Parole Officer, State Penitentiary. Have you got the writ there?

Mr. Zirpoli: The writ, itself? I think here is a copy.

The Court: Now, the Marshal's return does not set forth copies of the sentences of the Federal Court in Illinois. They appear in the record——

Mr. Zirpoli: Yes, in case No. 23647.

The Court: Both of those sentences provide that they are to commence to run "upon the expiration of the sentence which the said defendant is now serving in the Southern Illinois Penitentiary."

Mr. Zirpoli: There is a question there, your Honor, of interpretation. I believe a reasonable interpretation is an interpretation which would show physical restraint on the part of the Federal Government when it ceased in Illinois. Otherwise, assuming the parole would be for the rest of his natural life, there would be no necessity of imposing any judgment at all if it were contended or intended that judgment would commence [147] to run at the expiration of the actual sentence as such, including parole. It is question of determining the intent, and, as I view the intent, I would say, on

behalf of the respondent, that we view the intent as showing the intent for the Federal sentence to commence at the time of the discharge of the petitioner from the Southern Penitentiary of Illinois.

Mr. Wright: The petitioner was not discharged. He was merely paroled, and the law is to the contrary, that a man on parole cannot be paroled to another penitentiary for the purpose of serving a sentence.

The Court: As I take it, the question here involved is whether the sentence has expired, and the sentence which he was then serving has not expired, because according to the sentence, the man is in custody under the parole officers of Illinois. Is there anything further?

Mr. Zirpoli: Yes, your Honor. I would like to ask that this matter be continued at least another week, to make whatever showing I can with relation to that parole, whatever argument I can make from it, from the actual conditions of parole, as soon as I get the paper showing that.

The Court: There are other papers in this record, here.

Mr. Zirpoli: I would like to submit a memorandum of authorities in support of our position.

Mr. Wright: I would object to that, your Honor, because I have been incarcerated three years now on a restraint that has been illegal.

The Court: Here is the situation. This writ was not served until last Wednesday. The Government

desires to make a showing with regard to the actual conditions of the service of the Illinois sentence, and that is its right. It takes time. Mr. [148] Zirpoli is acting promptly. As I understand it, you have been in telegraphic communication?

Mr. Zirpoli: Yes, I have.

The Court: Or any other communication?

Mr. Zirpoli: No, I sent a telegraphic, an air-mail-telegraphic communication to the Attorney General, and received a telegraphic response indicating certain papers were being forwarded to me, and also quoting authorities.

The Court: Forwarded to you from where?

Mr. Zirpoli: It would be from the Illinois State Board, in connection with the parole.

The Court: Isn't there a document in this record showing the condition of release?

Mr. Wright: No, your Honor. I had one when I left the prison, and when I left the prison and was received at the Leavenworth, Kansas, prison I had twelve parole reports, arrival slip, and conditions under which I was released, and all the papers were destroyed.

Your Honor, the document I think you are referring to is a memorandum opinion upon an order denying a petition to vacate sentence.

The Court: Let me see that.

Mr. Wright: I addressed my first petition to Michael I. Welsh, and my second—second petition to Michael Roche. Judge St. Sure got both of them

and denied them, and my next application I thought I had better address it to Judge St. Sure, as he was going to get them all, anyway, so I addressed it to him.

Mr. Zirpoli: All three were filed with the District Clerk.

The Court: I am not talking about where they were filed; I am talking about the person to whom they were addressed.

Mr. Wright: I conferred jurisdiction by statute on the [149] District Judge and not to the Court.

Mr. Zirpoli: In each instance the Court allowed the case to be filed, and they didn't know which judge it was going to.

The Court: I note the petition is addressed to the Court, and follows a court procedure of assigning it through a clerk to the judge. But I am speaking now of a petition addressed to the judge and not to the court.

Mr. Wright: I objected. Here is a letter I addressed objecting to my petition being assigned to Judge St. Sure, and that is the reply I received.

The Court: According to this letter, the petition was addressed to the Court and not to the judge.

Mr. Wright: My applications will show that they are addressed to Michael J. Roche. I had his name there, and jurisdiction was taken up.

Mr. Lynch: The last petition, your Honor, is addressed to Judge St. Sure.

Mr. Wright: Yes, it is.

(At this point the telegram referred to by Mr. Zirpoli was produced.)

The Court: What is the date you received this telegram? October 8th? That is two days ago.

Mr. Zirpoli: That indicates it is being sent air mail, but we have not received it yet. I want to make one other observation for the record. I do not know what your Honor's decision may be, but if your Honor's decision is adverse to the respondent, I would respectfully ask that an order be made which would stay the actual discharge pending an appeal, because I want an opportunity, if necessary, to perfect my appeal to the Circuit Court, in order to be prepared. [150]

The Court: I am not familiar with the practice in that respect.

Mr. Zirpoli: I have looked at some cases directly on that point. This is just a conclusion I am making now. I have the right to appeal; those papers would have to be filed in the District Court, and then I would have the right to appeal to the Circuit Court, which would mean, of course, judges other than your Honor.

The Court: We will continue this over until next Saturday morning. Take this for the record. I take it that the position in the Government in this case is that the sentence of the Illinois Court is from one year to life, and that at the time that the Marshal subpoenaed the prisoner he had been

released from the Illinois Penitentiary but was on parole, under the State of Illinois law?

Mr. Zirpoli: Well, Judge, the respondent would only want to commit himself—the record would have to set forth the facts—the respondent would only commit himself to the extent that the petitioner is a prisoner in the proper institution of the respondent pursuant to the judgment and sentence of Judge Lindley. In other words, I would prefer to leave the facts remaining as they are so I would not have made any stipulation or concession which would affect me in my appeal if it becomes necessary to appeal it.

The Court: If the evidence that you offer does not show whether or not this man was and still is under sentence to be served by parole in Illinois, it will be necessary to take a deposition to that effect, requiring expense on the part of everybody. The facts ought to be disclosed. Here an inference could be drawn from these letters of the parole officers in [151] Illinois that he is still subject to sentence to be served on parole, and in violation of parole can be incarcerated in the Illinois Penitentiary.

Mr. Zirpoli: I do not want to make any statement which would unduly prolong the proceedings or require the taking of unnecessary steps. I merely want to protect myself on appeal. At the same time, whatever facts we can get in now——

The Court: I take it what the Government de-

sires and Mr. Wright desires is to have this thing put into shape so that if the decision is adverse to you, it may be appealed, and cleaned up, settled. I suppose you are aware, Mr. Wright, that if you sustain the contentions that you offered to the other judges, the contentions with respect to the character of the attorney in the jury case, and the court decides that that trial should be set aside, you may face another trial.

Mr. Wright: That is true. I understand about that.

The Court: And if you in any case should find that the sentence were invalid for indefiniteness, you run the risk of having another sentence. I am not passing on it.

Mr. Wright: I understand that, yes.

The Court: That is the risk you run.

Mr. Wright: But I would submit to a new trial. I know I couldn't walk out on the street tomorrow. I have no objection to being retried again. I understand I was convicted because I was denied my constitutional rights.

The Court: If you are successful by this action here, you understand you will not be free.

Mr. Wright: I understand that.

The Court: That is all. [152]

Saturday, October 17, 1942

11:00 o'clock A.M.

Appearances:

For Petitioner:

Cecil Wright, In Persona Propria.

For Respondent:

A. J. Zirpoli, Esq., Ass't U. S. Att'y.

Mr. Zirpoli: At this time, your Honor, I ask leave to file a supplemental return to the writ of habeas corpus. A copy of a document constituting the supplemental return has been served upon the Petitioner, and I have a copy of the brief here, Mr. Wright, which I just filed this morning. (Handing a document to Mr. Wright.)

Mr. Wright: I received a copy of that supplemental return last night at six o'clock, and I have an answer to the supplemental return that I would like to file now. (Handing a document to the Court.)

The Court: Did you write this last night?

Mr. Wright: Yes, your Honor.

The Court: Mr. Zirpoli, I find that in the return by the Marshal there is a request that photostatic copies of two letters be made a part of the evidence in this case. There is no affidavit or other indication that the letters were sent and received, and no reason given for not producing the originals, and I find that the Petitioner, in his response to the supplemental return points out "These letters cannot be considered legal evidence." Do I under-

stand that you object to the introduction of these letters?

Mr. Wright: I object and ask that they be stricken out. The reason for making that motion, those two letters were written before I was ever paroled. They were written before the [153] Parole Board ever considered my case, and it would have no bearing on the issue before your Honor.

Mr. Zirpoli: May I see the certificate which accompanied our exhibit? I believe this is in conformity with the provisions of 661, and that it is proper evidence to show inter-office communications in the usual course of business.

The Court: What do you mean by "inter-office"?

Mr. Zirpoli: It does not make any difference whether it is inter-office, but any communications in the usual course of business which have a bearing. Naturally, the first question to determine is whether or not it has any relationship or bearing on the question before your Honor, and I feel that these do have a relationship and a bearing on the question before your Honor, because I am introducing them primarily to show that the surrender of this prisoner-petitioner on the part of the Illinois authorities was a voluntary one, and that thereafter, his custody and physical restraint having been surrendered by the Illinois authorities, he is now properly in the custody of the Federal authorities, and I am using that in part because of a reliance on the Wall case, which indicates that the surrender must in a sense be a voluntary one,

and that thereafter the question of the right of the Federal authorities to hold him rather than the State authorities under the different sentences would be a right which is no longer personal to the prisoner.

The Court: What would you say to the objection to the letters prior showing an intent to take certain action are not evidence that the intent was carried out?

Mr. Zirpoli: I think I will introduce them, but I will ask that Mr. Wright be sworn for one thing, and I will ask him a [154] few questions which I think will tie in with my letters.

Mr. Wright: It shows in the letter, there, that those letters were written by the Warden of the State Penitentiary while I was a prisoner in the State Penitentiary, and before any action was taken by the Parole Board. I never appeared before the Parole Board until those letters were written, and the action taken by the Parole Board was on October 15th, and Mr. Zirpoli could have sent to Illinois and got those records instead of sending to Washington and gotten those there.

The Court: You may be sworn.

CECIL WRIGHT,

The Petitioner herein, was sworn by the Court.

The Court: Q. You just made a statement to us here. Is that statement true?

A. It is true, your Honor.

Mr. Zirpoli: Q. Mr. Wright, you were confined in the State Penitentiary there—was it Southern Illinois?

A. Southern Illinois State Penitentiary.

Q. Southern Illinois State Penitentiary, and you were serving a sentence there of one year to life, is that correct?

A. Less than one year, and no more than natural life.

Q. And that was the sentence that was fixed under the indeterminate sentence law?

A. That is right.

Q. At the time you were serving that sentence you asked to be paroled from that institution, did you not? A. Well——

The Court: Pardon me a moment. What is the question?

Mr. Zirpoli: Q. You asked to be paroled from that institution, did you not?

A. I never asked. They paroled me.

Q. Did you at any time write a letter to any Federal authorities asking them to remove the detainer which had been placed against [155] you?

A. I would like to ask, in making the answer, if I may explain it.

The Court: Explain it fully.

(Testimony of Cecil Wright.)

The Witness: On September 3rd—

Mr. Zirpoli: May I ask this, your Honor, that he tell me first whether or not he actually wrote making the request, and then I would be happy to have his explanation.

The Witness: I will answer, your Honor, yes. I would like to describe the letter.

Mr. Zirpoli: All right.

A. On September 3rd I wrote a letter to the Attorney General of the United States, asking him to remove the detainer for the reason that if he did, there was a possibility I could obtain parole, and I was then intending to, which I stated in my letter to the Attorney General, to submit my service to the United States Army—that was after the war between England and Germany—and the letter in reply to that, in response to that, it doesn't contain the contents of the letter that I wrote to the Attorney General. It is only in parts, and left parts out.

The Court: Q. Have you a copy of the letter that you wrote to the Attorney General?

A. No, your Honor, I was in the State Prison, All the papers were destroyed when I came into Leavenworth.

Mr. Zirpoli: Q. In other words, what you just told us was the reason you gave to the Attorney General for your being released, is that correct?

A. Yes.

Q. But you did request that the detainer be re-

(Testimony of Cecil Wright.)

moved, in order that your parole might be facilitated, is that correct?

A. Yes, I stated that, because I understood under the parole laws of Illinois I couldn't be paroled until that detainer was [156] removed.

Q. This letter that you wrote, would you say that that letter was a letter of September 3, 1939?

A. It was a letter of September 3, 1939, but it isn't before the Court now.

Q. No, it isn't before us, but it was a letter that you sent on September 3, 1939? A. Yes.

Q. In it you asked for the detainer to be removed to facilitate your parole, and in which you gave the explanation you just stated to us?

A. That is right, and I would like to state in answer to that that the Parole Board member Richard Dicklin, a former attorney, stated when I was before the Parole Board on a prior hearing, that when I was paroled by the State Parole Board the Federal authorities could not take us until we had served our State parole, and that was stated by a member of the Parole Board. I assume he knows the law of Illinois.

Q. Where did he tell you this?

A. He told me in the Parole Board room.

Q. Who was present at this conversation?

A. The usual Parole Board members. There were three.

Q. Do you recall who they were?

A. Why, yes. Mr. Landesco, Attorney, of Illinois; Robert D. Phillips, chief clerk of the

(Testimony of Cecil Wright.)

Parole Board, and there was Mr. Hallett—the first names I don't quite remember—of the Parole Board, which were present, and the shorthand reporter was present, too.

Q. When was this hearing?

A. This hearing—I couldn't state the exact month, but 1937.

Q. In 1937, it was the only hearing you had in that year? A. In that year, yes.

Q. And you say there was a reporter there?

A. There was a reporter there. [157]

Q. Do you know whether this was recorded?

A. Well, they must generally record all their testimony given, or anything said in the room.

Q. In other words, at least it is your belief that it was?

A. The shorthand man was writing; I assume he was taking down the proceedings.

Q. After you wrote the last letter that I mentioned, this letter of September 3rd, did you again come up before the Parole Board?

A. Yes, I did.

Q. Were you given parole?

A. I was paroled.

Q. Do you remember what the terms and conditions of your parole were?

A. Yes, for the rest of my life.

Q. Yes, and what else did they say?

A. They didn't say anything.

Q. Was anything said about your being turned over to the Federal authorities at that time?

(Testimony of Cecil Wright.)

A. No.

Q. Nothing at all?

A. Not by the Parole Board members, no.

Q. Who told you that, then?

A. I didn't know until they came and got me the day I was released on parole.

Q. You knew nothing about it until that time?

A. No.

Q. You were in the penitentiary, and then you were released on parole?

A. I was released on parole.

Q. The day you were released on parole, were you surrendered to the custody of any person?

A. Any person?

Q. Yes.

A. When I signed my conditional release, I signed it for my bona fide residence, and that was in the condition that I signed. I signed the parole before I was taken into custody out in front of the prison. I was taken into custody out in front of the prison by the United States Marshal. And I might say that in that letter in response there that you have as [158] Exhibit A it says the Marshal of East St. Louis, Illinois, was holding the commitment. Well, the Marshal was not holding the commitment in East St. Louis, Illinois, but the commitment was being held by Mr. Ryan, United States Marshal of Danville, Illinois. If they had a detainer there, they should know who was held on the commitment.

(Testimony of Cecil Wright.)

Q. But you were arrested by the United States Deputy Marshal, is that correct? A. Yes.

Q. And that was done at the time you left the institution, there? A. That is right.

Q. Where did you first see the Marshal?

A. I saw him after I got out in the front house of the Administration Building of the prison, where they give you your money and your parole officers.

Q. He accompanied you out of the prison, didn't he?

A. When he got me to the gate he put handcuffs on me.

Q. He accompanied you as far as the gate, and after you got to the gate he put handcuffs on you?

A. I would say it wasn't my fault he did.

Q. I am not questioning that, whose fault it was; I am just asking you if that was the factual situation.

A. A man in confinement ordinarily has no legal rights.

Q. I know, but, Mr. Wright, it is true, then, that he accompanied you from the Administration Building to the gate?

A. No, from the gate to the automobile.

Q. Did you see him in the Administration Building?

The Court: Q. Do I understand that he met you at the gate and accompanied you to the automobile?

A. That is right, your Honor.

(Testimony of Cecil Wright.)

Q. You had not seen him before when he met you at the gate? [159] A. No.

Mr. Zirpoli: Q. You had not seen him at the Administration Building?

A. He wasn't in the Administration Building, back in the Warden's Office where I signed the parole.

The Court: Q. As soon as you were released on parole and just free, he took you?

A. That is right, your Honor.

Mr. Zirpoli: Q. And then you were taken to Leavenworth and ultimately transferred to Alcatraz?

A. I objected to him taking me out of there and he said he had a detainer on me. I had one more year, he said, to serve on my Federal sentence. My sentence was running concurrent. The United States Marshal said that, himself. Of course, I would say—I don't know whether it would be true, or not—but I would say this—

Mr. Zirpoli: Q. As a matter of fact, you made that point, yourself, didn't you?

A. Made what point?

Q. That you just had one more year to serve under the Federal sentence?

A. No, I did not make it; he made it.

Q. Hadn't you made that point, yourself?

A. Have I ever made it?

Q. Yes. A. Not in his presence, no.

Q. You make it now, don't you?

(Testimony of Cecil Wright.)

A. Certainly. I repeat what he said.

Q. I was wondering if you were making that point on your own behalf at this time.

A. I will say this. I read the commitment papers on the train en route to Leavenworth, Kansas.

The Court: Q. Pardon me. You say you had one more year to serve on your Illinois sentence?

A. Yes, that is what the United States Marshal told me.

Q. Do you know, yourself, how long you had to serve under that sentence?

A. Not at the time, because Judge Lindley had [160] previously wrote me at the prison in 1935 and told me my sentence was running. He told me my sentence had begun to run.

Q. You mean your Illinois sentence was still running?

A. The Federal sentence. I was in the Illinois State Prison and serving concurrently my Illinois sentence.

Mr. Zirpoli: Q. Let me ask you something about that: Did you tell Judge Lindley that your Federal sentence was running, or did he write you and say your term had expired for modification of your sentence?

A. He said in these words—I wrote him applying for a writ of habeas corpus——

Q. Yes.

A. He said he had lost jurisdiction over my case

(Testimony of Cecil Wright.)

after the expiration of the term of court in which I was convicted, and especially after sentence had begun to run.

He said, "Your only remedy lies in an executive order of the President of the United States, or a parole of the Parole Board when eligible." And that letter was forwarded to St. Louis at that time to make application for clemency, and it seems James F. Chauncey (?) was United States Attorney. He wouldn't forward the necessary application papers, and through Senator Hamilton Lewis I obtained those papers, and that he guaranteed that the Senator would help me to have the sentence set aside. Now, in making that application for executive clemency, I had several affidavits from business men in Illinois, and after I prepared the application it was destroyed, too. The State of Illinois prison destroyed the papers, the Federal papers, tore them up and then I was disgusted. It was no use to proceed further with making an application. And I assumed then, from what Judge Lindley said, that that was true and I was serving my sentence concurrently, the State sentence being no more than life and the Federal sentence had expired by lapse of [161] time.

Q. Do you have the letter of Judge Lindley?

A. You have it in the deposition. You have Judge Lindley's deposition about that letter.

Q. In which he said the term of court had expired——

(Testimony of Cecil Wright.)

A. And in which he said the sentence had begun. You have that in the deposition.

Mr. Zirpoli: I am inquiring about that, because I want to make clear this particular matter.

The Court: It isn't a matter of what Judge Lindley said. The term of court had expired; the sentence had been pronounced.

Mr. Zirpoli: Yes. That is what I had in mind.

The Court: Q. Mr. Wright, you seem to have a knowledge of the law, here. How did that happen?

A. I beg your pardon?

Q. You showed a great deal of knowledge of the law here, tendering a series of documents. Did you ever study law?

A. Yes, I studied ever since I have been in prison.

Q. How?

A. Well, over in Illinois I had—I was in prison there where there were college graduates, and we had law courses in there, and I just got the benefit of the opportunity to read those books and study those books. I read all the books out of the La Salle Extension University in Chicago.

Q. Out of what?

A. Out of the La Salle Extension University in Chicago.

Q. You took a University Extension Course?

A. I had a course another inmate had, and turned it over to me. And I was under the supervision at that time studying this course of Nathan

(Testimony of Cecil Wright.)

Leopold, one of the college graduates out of Chicago. He is one of Bobby Frank's murderers.

Q. What is the effect under the Illinois law, if you know it, [162] of a breach of parole on your part?

A. I would be returned to the prison and then I would go before the Parole Board, after I am in prison thirty days, and I would then receive whatever sentence that they should impose upon me. And they might impose ten to fifteen years, maybe twenty years, or life. But, ordinarily, they have ten years, maybe, for a second violation. And they can parole you on the same sentence.

Q. Seeing you are so familiar with the Illinois law, where can I find in the Illinois law the facts concerning the law which you just stated?

A. 16 Corpus Juris, 1309 gives part of the Illinois law. It is in one page of the traverse.

Q. Are you aware, Mr. Wright, that one of the conclusions to be drawn from the cases which are presented here is that you have not been serving your sentence at all in the Federal Penitentiary?

A. That is true.

Q. You get no credit on the years that the sentence, the Federal sentence, was imposed on you?

A. No, I would have no credit, at all, according to the judgment of the court.

Q. This court has not adjudged anything yet.

A. I mean according to the judgment of the trial court—to start upon the expiration of my state

(Testimony of Cecil Wright.)

sentence. My sentence had never expired, and I had never begun the sentence.

Q. Under the Illinois law—I am asking you these questions for the purpose of aiding me in my research—under the Illinois law can that sentence for life be terminated by any action of the Parole Board? A. By executive authority.

Q. By what?

A. By the executive authority. That would be the Governor.

Q. Is that provided in the statute, or is it simply a pardon?

A. It is provided in the statute. [163]

Q. What do you get by virtue of that statute, a pardon, or is there a termination of your sentence by the Governor, or do you know?

A. Well, I don't exactly know much about that point.

Q. Have you read a statement which provides that your sentence may be terminated by executive order, or is that merely a pardon for a crime?

A. No, I haven't read my statute on that, but I believe they are. I assume from the Illinois authorities, there, I have in the traverse, there is a statute to that effect.

The Court: Am I correct in my assumption, Mr. Zirpoli, that the position of the government here is that this man was under parole at the time that he was seized by the United States Marshal and taken to Leavenworth?

(Testimony of Cecil Wright.)

Mr. Zirpoli: I believe that would be true, your Honor. I think the record would show that he was under parole, and the primary contention of the government is that it becomes a question of interpreting that sentence of Judge Lindley and in interpreting his intent it is our contention that the intent was that the sentence should begin to run upon termination of his sentence in the Illinois Penitentiary, and when the physical restraint should cease at the Southern Penitentiary of Illinois, the Federal sentence was to commence, the very nature of the sentence being a penitentiary sentence.

The Court: Assuming now our investigation of the Illinois law shows that a parole does not end his liability to incarceration under the sentence in the event that he violates a parole, would that not be a sentence still involving penitentiary detainment?

Mr. Zirpoli: Of course, my view is it is not within the meaning of the sentence of Judge Lindley. I recognize the point that your Honor is making, and I am also fully aware of the [164] implications that would come from a decision which would be adverse to the respondent, because I have not the slightest doubt in my mind that there are probably many prisoners today who are imprisoned under sentences identical to the one now before your Honor, and in which the situation is identical.

The Court: Of course, it would be a very simple thing for a sentence to read that "This sentence be-

(Testimony of Cecil Wright.)

gins to run upon the end of the imprisonment of a defendant under sentence by the State court of Illinois." What you are asking us to do is to put those words into the sentence of Judge Lindley. In other words, you are asking us to have it read, not as it is now, but that the Federal sentence ought to begin at the termination of the imprisonment of the defendant in the penitentiary, which imprisonment is a part of a sentence of one year to life of the Illinois court. Such sentences could very easily be drawn to cover the exact situation.

Q. You haven't copy of this?

A. No, your Honor.

Q. My suggestion is that you get some carbon paper, if you have to write any more of these, so that you will have copies. It would facilitate time. I spent 48 hours on a train coming up here because I believe it is the duty of a Federal Circuit Judge to hear the matter where, as here, you have exhausted the three attempts to reach District Judges. Am I correct in my understanding that all three of your petitions were addressed to individual judges, one to Judge Welsh, one to Judge Roche, and one to Judge St. Sure?

A. Yes, your Honor.

Q. How did you send your petitions to those judges?

A. Well, the first petition I never knew exactly the operation of the Court, and I forwarded it to the Clerk of the Court, and asked him to give the

(Testimony of Cecil Wright.)

petition to Martin I. Welsh; but the second [165] petition I addressed to Martin I. Welsh. I had a typewritten letter to Martin I. Welsh—correction—to Judge Michael J. Roche. It was received by the Clerk of the District Court.

Q. It what?

A. It was received by the Clerk of the District Court.

Q. But you addressed it to Judge Roche?

A. I registered it with a return receipt.

Q. From whom?

A. I received a return receipt. It had Michael J. Roche's name printed and then it was under-signed, I imagine, by his secretary. And then I made a complaint to the District Clerk about Michael J. Roche not receiving the application, and he wrote back and told me he answered Michael J. Roche's correspondence, himself. Whether he had received and opened Judge Michael J. Roche's mail I don't know, but he answered the letter. The third application—Judge St. Sure had received the two petitions that I had addressed to the other two judges, and the third petition I figured I might as well send it to Judge St. Sure.

Q. So you addressed a petition to each one of the District Judges? A. Yes.

Q. So far as you know, you exhausted all the District Judges before you petitioned to the Circuit Judge? A. Yes, your Honor.

Q. Very frankly, Mr. Wright, since you have

(Testimony of Cecil Wright.)

refused to take counsel, that throws on me the burden of studying the Illinois law, because one phase of this question is whether or not, from the Illinois law, your service had ever terminated. Is there anything further that you desire to submit?

A. In view of what you said there, no, there is not, because anything I would say would be—I know your Honor would necessarily have to study the law, I understand that, but I believe the restraint on me—— [166]

Q. You have your right for prompt action, but action could not be any more prompt than the processes of the judge's mind, and since you did not choose to have counsel, I cannot call upon Mr. Zirpoli for this work, and such investigation I have to make of the Illinois law, I will have to make, myself. You do not always find the statutes in the library that are the last word, or sometimes not the cases.

A. I would like to say, I do not like to impose upon your Honor that burden, and if your Honor sees fit, if you wish to appoint an attorney for that purpose, I have no objection to that.

Q. The trouble is, I am not here with the Court. They are sitting in Los Angeles tonight. Do you have anything further, Mr. Zirpoli?

Mr. Zirpoli: No, your Honor, except I want to urge the original point, and I have briefed that, and, of course, the Government continues to make its argument that, in so far as the sentence of Judge

Lindley is concerned, which we contend he is now lawfully serving, it would be immaterial whether he is on parole under the Illinois State law or not. The fact is he is no longer in the Illinois Penitentiary.

The Court: That may be, but when he walked out of the penitentiary he was in the custody of the Warden. Still the Illinois law——

Mr. Zirpoli: We contend that the State of Illinois voluntarily surrendered him by their acts to the Federal Government, and we feel there is enough evidence at least to suppose that that was so, that they did that.

The Court: Did you ever see the statement of the prisoner, here?

Mr. Zirpoli: No, but the exchange—— [167]

The Court: Wait a moment. As I understand it, both of you have put in the record, here, all that has happened in the three prior cases?

Mr. Zirpoli: No, these arguments were not all made in the three prior records.

The Court: No, I am talking about the statement of the prisoner in one of his petitions, that he was surrendered by the State of Illinois to the United States Government. That is correct, isn't it?

Mr. Zirpoli: Yes, but I might say this——

The Court: Wait a minute. If we have it admitted by the prisoner that he was so surrendered, what proof have you got to refute that?

Mr. Zirpoli: Admitted that he was so surren-

dered? I am not offering any additional proof except the exchange of letters.

The Court: You are trying to show by two letters prior to any action taken by anybody, letters of persons who had no authority, whatsoever. Have you a letter or a statement from him that the State of Illinois did it?

Mr. Zirpoli: We can never show naturally the intent of the State. We have to look at the actions of the officer which represented it.

The Court: Suppose he admits that the State of Illinois surrendered him? Can you go further than that?

Mr. Zirpoli: No, I do not——

The Court: You had better read your record and find what he has admitted.

Mr. Zirpoli: He has admitted now he was taken in custody by the Marshal.

The Court: His statement here is that it was after he [168] left the penitentiary and had gone out and was free that he was taken.

Mr. Zirpoli: That is why I made this other offer of proof, and the only way you can look at intent is by looking at the conditions prior to the act.

The Court: Of the parties who had the authority to surrender. You can't have a couple of policemen talking.

Mr. Zirpoli: The Federal Penitentiary authorities, in a sense, can evidence what took place. This was addressed to the Department of Public Wel-

fare and is signed by the Warden of the Penitentiary. It is presumed, at least, the Warden is performing his duty in conformance with whatever instructions may have been given to him by his superiors.

The Court: There is no evidence of any instructions.

Mr. Zirpoli: There is no evidence other than the physical facts which took place and the correspondence which preceded it would indicate the intent of parties, and that correspondence shows from the concluding paragraph, "Your Department will be advised thirty days prior to his release from this institution so that you may have an officer on hand to take him into custody." And at that time he was released on parole.

Mr. Wright: Yes, but the Warden of the State Prison is not a member of the Parole Board.

Mr. Zirpoli: I recognize he is not a member of the Parole Board. And I might add one other thing in that connection. That right to complain, as I pointed out in the Wall case, is not personal to the prisoner.

The Court: He has no right to complain of a surrender, if the State of Illinois does surrender him; that opinion holds that that is between two authorities. The point that the prisoner [169] might make—but he has admitted to the contrary—the point the prisoner might make is that he never was surrendered. The fact that somebody is waiting outside the gate with a pair of handcuffs does not

mean the State of Illinois surrendered him for that purpose. But he has stated in one of his petitions—

Mr. Zirpoli: I might go further and make one other point. It would be totally immaterial at the time if he was surrendered or how the Federal Government got jurisdiction. He cannot make the personal complaint—

The Court: Suppose they took him out of the jail yard?

Mr. Zirpoli: And they put him in a Federal institution under a sentence which is valid?

The Court: Yes.

Mr. Zirpoli: He hasn't the right to complain as to his serving that sentence. The only one who can complain is the State of Illinois, and there are cases which so hold.

The Court: I think you will find that the State of Illinois has nothing to do with whether or not a sentence has terminated.

Mr. Zirpoli: You mean their own sentence?

The Court: No—whether their own sentence has terminated.

Mr. Zirpoli: Yes.

The Court: Suppose the Marshal walked in the prison yard and just took him out.

Mr. Zirpoli: Yes.

The Court: That is no evidence that the sentence has terminated.

Mr. Zirpoli: No, that would be no evidence that the sentence had terminated in the Illinois State penitentiary.

The Court: It would be to the contrary: He was still serving it. At the time he was incarcerated, he was taken out. [170]

Mr. Zirpoli: That goes to the determination of whether or not that sentence has terminated within the meaning of the sentence.

The Court: That is not my question. I am assuming an improper and unauthorized taking over of the prisoner by the United States.

Mr. Zirpoli: What I had in mind——

The Court: Now, the prisoner has a right to complain of that as well as the State of Illinois.

Mr. Zirpoli: He has no right to complain about that. The only complaint he can make is that his Illinois sentence — he can't complain about the manner in which his custody was taken—he can only complain about the fact that his Federal sentence has not commenced to run. The point I have in mind was it would make no difference how they got his custody, whether he was surrendered or not. Let us assume he was given a 15-year sentence without any indication as to how it should run, and that it ran from the time it was imposed. 30 days after it was imposed, a Federal Marshal goes into the penitentiary and forcibly takes the prisoner from the State Penitentiary to serve his sentence in Alcatraz. He cannot complain about that, because that is a sentence which is then running, and the only question we have to decide now is, Did this Federal sentence commence to run?

The Court: These cases which have been cited

to me are on the theory that in each case the Government may surrender him to another government to enable that government to carry out its sentence. This Wall decision seems to hold that. Of course, the prisoner can complain that was done before his sentence expired and the new sentence had begun to run. That is [171] all that seems to be presented here.

Mr. Zirpoli: That, as I have stated, your Honor, we are arguing on our construction of these sentences.

The Court: The whole thing comes back to that question whether or not this sentence has begun to run and whether or not the sentence under which he was imprisoned had terminated. Well, we will consider the case submitted, then, and I will endeavor to get out my decision with as much promptitude as I can.

Mr. Zirpoli: Your Honor, naturally being advised, being prepared for the worst as well as the best, your Honor, I merely wanted to invite the Court's attention to Rule 29.

The Court: Rule 29 of what?

Mr. Zirpoli: Of the Rules of the Circuit Court with relation to appeals and the custody of a prisoner who is detained pending appeal, and particularly paragraph 3, which was a form of order that was made in *Coulson v. Johnston*, which is recorded in 35 Fed. Supp.

The Court: Mr. Reporter, the case has been submitted.

(Further discussion off the record.) [172]

Before William Denman, United States Circuit
Judge for the Ninth Judicial Circuit

IN RE PETITION OF CECIL WRIGHT, FOR
A WRIT OF HABEAS CORPUS AND TO
SECURE RELEASE FROM THE CUSTODY
OF JAMES A. JOHNSTON, WARDEN OF
THE UNITED STATES PENITENTIARY
AT ALCATRAZ, CALIFORNIA.

Opinion and Order that petitioner may proceed
in forma pauperis, that he be released from the
custody of Warden Johnston, and for bail pending
appeal.

Petition for Writ.

Writ of Habeas Corpus, copy.

Return of Warden Johnston.

Supplemental Return of Warden Johnston. Pe-
titioner's traverse of return.

Transcript of Proceedings at hearing on writ.

Brief of Petitioner.

Brief of Warden Johnston. [173]

OPINION AND ORDER GRANTING
PETITION

Prisoner Wright's petition for a writ of habeas
corpus, addressed to me as such circuit judge,
leading to a hearing and this decision that he be
released from the United States Penitentiary at
Alcatraz, California, a penitentiary situated in this
circuit, was preceded by his three petitions con-

taining similar allegations, separately addressed to each of the United States District Judges for the Northern District of California. All were denied. Hence is declined the exercise of any discretion to refuse to consider Wright's present petition, which may be permitted under such decisions as *United States v. Hill*, 71 F. (2d) 159 (CCA-3rd), and *Sweetney v. Johnston*, 121 F. (2d) 445 (CCA-9th).

[174]

Wright's second petition was not heard by the district Judge to whom it was addressed¹. He attempted to appeal from the discharge of the writ in that proceeding, but his appeal was frustrated because his petition to proceed in forma pauperis was denied by the district judge, who decided it against him on the ground Wright's claims were without merit.

The judge so denying a proceeding forma pauperis, heard the third petition and denied it. Wright, a pauper, concluded it useless again to initiate forma pauperis proceedings before him.

The Government contends that the making of such a second attempt to prosecute an appeal is a condition precedent to his right to have this consideration of his fourth petition. The law places no such limitation on the consideration of the claimed wrongful imprisonment. If there be a

(1) Though each petition was addressed to a separate judge, Wright headed them with the name of the district court and they were treated as if addressed to the court.

discretion to refuse to consider the petition in these circumstances, its exercise is declined. One cannot refuse to consider a petition in which, as developed at the hearing, the merits finally appear so clear, however much the petitioner may have failed to make them clear in the other proceedings.

[175]

Wright also petitioned to proceed here in forma pauperis, which petition should be granted.

At the present hearing, all the prior proceedings and the evidence there adduced were admitted as evidence on the issues joined by the Warden's return to the fourth proceeding. The Warden's return claimed the right of petitioner's custody by virtue of two consecutive sentences, adjudged on September 27, 1930, by the United States District Court for the Eastern District of Illinois. The sentences were to the penitentiary at Leavenworth, Kansas, to which Wright was taken on October 31, 1939, and from which he was transferred to that at Alcatraz, California.

The first of the federal sentences, for 10 years, was given after trial and verdict. The second, for 5 years; after a plea of guilty.

Other defendants were convicted with Wright and the sentences of all provided, "said sentences to begin upon the expiration of the sentences which said defendants are now serving in the Southern Illinois Penitentiary." This penitentiary is situated at Menard, Illinois, from which Wright had been temporarily released in September, 1930, for his trial in the federal court.

Wright contends that the clause beginning with "which" is descriptive of the entire Illinois sentence which has not yet terminated, and which he [176] now should be serving on parole in the custody of the Illinois officials. Hence, he claims the federal sentences have not commenced and the Warden has no right to his custody.

The Warden contends that the district court intended that the federal sentences were to begin when Wright was released from the Illinois penitentiary, whether temporarily or permanently, and even if, here nine years later, Wright was in the custody of the Illinois officials on parole. The Warden's position necessarily is that, by the use of the phrase "which said defendants are now serving in the Southern Illinois Penitentiary", it was not intended merely to describe a particular Illinois sentence to distinguish it from some other sentence.

However, it appears that there was evidence before the federal court from which it could be inferred that petitioner had another Illinois sentence to another place of confinement, Joliet, Illinois, upon which he was on parole when the sentence to the Southern Illinois Penitentiary was adjudged. The phrase of the federal sentence refers to the sentence which Wright is "now serving in the Southern Illinois Penitentiary," at Menard, and thus distinguishes it from the sentence to Joliet. [177]

It also appears from the evidence, and is admitted by the Government, and is so found, that on October 31, 1939, when Wright, after nine years' imprisonment in the Southern Illinois Penitentiary,

was taken into custody in Illinois by the United States Marshal for the purported service of these federal sentences, he was serving, on parole, after the nine years' imprisonment, a sentence for not less than one year and not more than life for robbery with a dangerous weapon. Cahill Illinois Revised Stat. 1929, Criminal Code, Ch. 38-515. This sentence, as all Illinois indeterminate sentences, consisted in part in his custody in the Illinois penitentiary and in part on parole in the custody of the officers of the Illinois Department of Public Welfare. The penitentiary service may be resumed after some time on parole.² [178]

(2) Ch. 38-801 Illinois Criminal Code, Cahill Revised Stat. 1929. "Rules for Parole. The said Department of Public Welfare shall have power, and it shall be its duty, to establish rules and regulations under which prisoners in the penitentiary * * *, may be allowed to go upon parole outside of the penitentiary * * *: Provided, that no prisoner or ward shall be released from either penitentiary or * * * until the Department of Public Welfare shall have made arrangements or shall have satisfactory evidence that arrangements have been made for his or her *honorable and useful employment while on parole* * * *: And, provided, further, that all prisoners and wards so temporarily released upon parole, shall at all times, until the receipt of their final discharge, be considered *in the legal custody of the officers of the Department of Public Welfare*, and shall, during the said time be considered as remaining under conviction for the crime or offense of which they were convicted or committed and *subject to be taken at any time within the enclosure of such penitentiary, reformatory and institutions herein mentioned.* * * *." (Emphasis supplied).

In this custody by the state officials of the prisoner on parole, the Illinois law is like that of the United States.

“* * * The parole authorized by the statute does not suspend service or operate to shorten the term. While on parole the convict is bound to remain in the legal custody and under the control of the warden until the expiration of the term, less allowance, if any, for good conduct. While this is an amelioration of punishment, it is in legal effect imprisonment. The sentence and service are subject to the provision of Bar 6 that if the parole be terminated the prisoner shall serve the remainder of the sentence originally imposed without deduction for the time he was out on parole.”

Anderson v. Corall, 263 U. S. 193, 196.

With this evidence and finding that Wright was in the custody of the state officials when the United States Marshal seized him for his present imprisonment, any presumption that the Marshal must have done his duty and hence that the Illinois sentence had expired and the federal sentence begun has no application.³

Wright admits that he was surrendered by Illinois to serve the federal sentences before the expiration of the Illinois sentence referred to in the

(3) Cf. *Wall v. Hudspeth*, 108 F (2d) 865, 867, where the record was silent as to what the situation was when the prisoner was seized.

federal sentence. However, the question here is not concerned with the transfer of Wright from the [179] Illinois officials to the federal officer. That is a matter of concern solely between the two sovereignties and of which Wright cannot complain⁴. The question is whether, when the United States Marshal seized Wright, regardless of how and where, the federal sentences had begun to run. If they had not, his seizure was not warranted and Wright should be released.

Though the evidence shows the reason why the federal sentence was cast in a form to make certain which of the two Illinois sentences it was to follow, the Warden contends the phrase of the federal sentences that they are "to begin upon the expiration of the sentences which said defendants are now serving in the Southern Illinois Penitentiary," does not mean exactly what it says. He would have it construed as if after the word "expiration," the words "of the penitentiary portion," should be inserted. As so revised, the Warden would have the sentence read, "to begin upon the expiration (of the penitentiary portion) of the sentences which said defendants are now serving in the Southern Illinois Penitentiary." He could not contend that it meant that Illinois had two sentences on Wright's conviction of robbery, [180] one for imprisonment which terminated on the change of custody from imprisonment to parole,

(4) *Ponzi v. Fessenden*, 258 U. S. 254, 265.

and another which began with the custody under parole.

The Warden's contention does violence to the plain language of the sentence. However, were it correct, the federal sentence would be void for uncertainty. The validity of the sentence must be determined by the facts existent at the time it was made. There was not then, and is not now, any treaty between the United States and Illinois that Illinois prisoners in the custody of its officials would be surrendered on demand of the United States. There was not then, nor is there now, any law of Illinois requiring such surrender on demand of the United States. The most that a federal district court, looking forward from the date of its sentence, could hope for was that at some time an agreement might be arrived at between the two sovereignties for the surrender of the Illinois prisoner to the United States Marshal.

Looking forward from the day of sentencing, nothing could be more uncertain to the federal court than that sometime during Wright's Illinois sentence, possibly for life, the following contingencies would happen: (a) that he would be released from the penitentiary on parole, and (b) that prior to that date an agreement would be made between the two sovereignties whereby Illinois would surrender [181] its right to Wright's custody during parole and turn him over to the United

States. Of course, the federal sentence could not have its beginning predicated upon the expectancy that the United States would violate the state's custody and seize Wright while on parole without the state's consent.

The Illinois indeterminate sentence law with its parole provision is aimed at the restoration of the prisoner to a useful place in the community. The law itself provides for the finding of some "honorable and useful employment while on parole."⁵ It provides for supervision by the Department of Public Welfare during such employment, with a view to restoration of the prisoner to his liberty when, upon evidence to the Department, it appears he "will remain at liberty without violating the law and that his or her release is not incompatible with the welfare of society." Ch. 38-804 Illinois Criminal Code, Cahill Illinois Revised Stat. 1929.

It is no fanciful conjecture to anyone familiar with the long prevalent view of those interested in the reform of persons convicted of crime, that the Illinois Department of Public Welfare, in office at the time of release of any prisoner on parole, might insist that the benevolent [182] purposes of the Act would be served best by his continuance under the Department's reforming supervision, rather than by his surrender to another sovereignty for incarceration in its penitentiary. Such a board well could consider that when its reform attempts

(5) Footnote 2, *supra*.

were successful, the reformed man would be in a position to seek executive clemency from the other sovereignty.

That a board would be less likely so to regard Wright, with his several convictions, does not make certain that Illinois, nine years later, would agree to his surrender to the United States. The litigation of this circuit for the last decade shows there is no measuring rod to determine what may or may not be done by administrative bodies in the ardent pursuit of social reforms. The after-wisdom of the fact that there happened to be a board which surrendered Wright, does not make the federal sentence any more certain when given.

Since the federal sentence ties itself to the indeterminate sentence and parole provision of the law of Illinois, the Warden's claimed construction of the beginning of the federal sentence would have to read "upon the termination of the imprisonment portion of the Illinois sentence if the Illinois authorities will then surrender their custody and give up the prisoner to the United States." Since, as seen, there is no certainty of such sur- [183] render, the federal sentences so construed would be void.

I do not agree with the Warden's construction. The true construction makes the federal sentences valid. This would require that construction if there were any ambiguity in their phraseology, which there is not. They plainly mean that they are to begin at the termination of the whole Illinois sen-

tence, not at his first penitentiary period.^{5a} That sentence may be terminated in a proceeding before the Department of Public Welfare in which the Department finds the statutory requirements are satisfied and orders Wright's discharge from his commitment, which order is approved by the Governor.⁶ [184] Here, unlike the uncertainty of an

(5a) Assuming that a sentence beginning at the termination of the imprisonment and running through the time when by negotiation, perhaps through years, Illinois finally surrendered him, were valid and the sentences actually adjudged were ambiguous and permitted either that interpretation, or that they began at the termination of the entire Illinois sentence, the uncertainty of the former interpretation would require the adoption of the latter.

(6) Chg. 38-804 Illinois Criminal Code, Cahill Illinois Revised Stat. 1929. Complete Discharge of Paroled Prisoner or Ward. “* * * whenever it shall be made to appear to the satisfaction of the Department of Public Welfare that any prisoner or ward has faithfully served his or her term of parole and the Department of Public Welfare shall have information that such prisoner or ward can safely be trusted to be at liberty and that his or her final release will not be incompatible with the welfare of society, the Department of Public Welfare shall have power to cause to be entered of record in its department an order discharging such prisoner or ward for or on account of his or her conviction or commitment which said order when approved by the Governor shall operate as a complete discharge of such prisoner or ward, in the nature of a release or commutation of his or her sentence to take effect immediately upon delivery of a certified copy thereof to the prisoner or ward,

agreement between the two sovereignties, for which there is no provision in the law creating the sentence, the termination of the Illinois sentence is determinable by the fixed procedure of the sentencing statute.

Wright contends that because the termination of the Illinois sentence is fixed by events so occurring in its parole period, the federal sentences are uncertain as to their beginning. If his contention be correct, no sentence may run consecutively on a prior sentence of any of the many jurisdictions which have indeterminate sentence laws.

This contention is not maintainable. Every indeterminate sentence ends, either at its extreme period or at some time prior thereto, when definite statutory provisions have been satisfied. In this respect, such sentences are no more indefinite as to termination than is a federal sentence, say, for forty years which may sooner be terminated by the allowance of good behavior credits. If the Warden or controlling officer or board allow all the credits, the forty year sentence will terminate at the end of say, twenty-six years. When the consecutive sentence is adjudged, it cannot be said that all, or indeed any, of the credits on the prior sentence will be earned. The consecutive sentence may commence at any time in the fourteen years between

and the clerk of the court in which the prisoner or ward was convicted or committed shall, upon presentation of such certified copy, enter the judgment of such conviction or commitment satisfied and released pursuant to said order."

twenty-six and forty years after the prior sentence is given. Just [185] as in the so-called indeterminate sentence, the terminal date is determinable on the subsequent action of persons authorized so to do. Such consecutive federal sentences are held to have the necessary certainty. *Blitz v. United States*, 153 U. S. 308, 317. Wright's federal sentences are not void because of uncertainty as to the date of their commencement,—that is, after the full period of the Illinois sentence, including his custody both in prison and on parole by the Illinois officials.

Wright's incarceration in Leavenworth and Alcatraz before his federal sentences commenced, has been without authority. His proof of the facts has made of no value to him the several years spent there which, with good behavior credits, nearly fulfilled his five year sentence. His fifteen years of federal sentences will have to be served after the termination of the Illinois sentence, unless his contention be later maintained that his ten year sentence is invalid.

Wright claims the ten year federal sentence is void because the attorney assigned him by the district court also represented other persons tried with him who had given confessions used at the trial, which confessions involved his participancy in the crime [186] charged. He claims such an attorney would prejudice him with the jury and that he would not be free to conduct a defense with the singleness of purpose the law requires. *Glasser v. United States*, 315 U. S. 60.

There is no evidence upon which Wright's five year sentence, coming after a signed confession to the federal officers and a plea of guilty, may be held invalid. Not having served that sentence, the claimed invalidity of the ten year sentence cannot be entertained in a habeas corpus proceeding. *McNally v. Hill*, 293 U. S. 131.

Wright's petition to proceed in forma pauperis is ordered granted. He should be discharged from the custody of the Warden; but, pending appeal from this decision, he may be enlarged upon recognizance with security in the amount of Five Thousand Dollars (\$5,000.00) for appearance to answer the judgment of the appellate court, provided that unless appeal be taken within ten (10) days from the filing of this order with the Clerk of the United States District Court for the Northern District of California, he shall be enlarged without such recognizance. In the absence of appeal, he shall be discharged from the Warden's custody.

WILLIAM DENMAN

United States Circuit Judge
for the Ninth Judicial Circuit

[Endorsed]: Filed Nov. 10, 1942. [187]

In the United States Circuit Court of Appeals
for the Ninth Circuit

23744

IN RE PETITION OF CECIL WRIGHT FOR A
WRIT OF HABEAS CORPUS AND TO
SECURE RELEASE FROM THE CUS-
TODY OF JAMES A. JOHNSTON, WAR-
DEN OF THE UNITED STATES PENI-
TENTIARY AT ALCATRAZ, CALIFOR-
NIA.

NOTICE OF APPEAL TO THE CIRCUIT
COURT OF APPEALS

Notice is hereby given that James A. Johnston, Warden of the United States Penitentiary, Alcatraz, California, the respondent in the above-entitled proceedings, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the order and opinion of the Honorable William Denman, United States Circuit Judge for the Ninth Judicial Circuit, discharging the petitioner, made and entered in the above-entitled action on November 10, 1942.

FRANK J. HENNESSY

United States Attorney,

By W. E. LICKING

Asst. U. S. Atty.

A. J. ZIRPOLI

Assistant United States

Attorney,

Attorneys for Respondent.

District Court of the United States
Northern District of California
Southern Division

No. 23744

CECIL WRIGHT,

vs.

JAMES A. JOHNSTON, Warden, etc.

NOTICE OF APPEAL

To.....

You Are Hereby Notified that on Nov. 12, 1942, a Notice of Appeal was filed by James A. Johnston, Warden, etc. in the above entitled case. A copy of which is enclosed herewith.

WALTER B. MALING

Clerk, U. S. District Court

San Francisco, California, Nov. 12, 1942. [189]

Before William Denman,
United States Circuit Judge
for the Ninth Judicial District.

No. 23744

IN RE PETITION OF CECIL WRIGHT, FOR
A WRIT OF HABEAS CORPUS AND TO
SECURE RELEASE FROM THE CUS-
TODY OF JAMES A. JOHNSTON, WAR-
DEN OF THE UNITED STATES PENI-
TENTIARY AT ALCATRAZ, CALIFOR-
NIA.

DESIGNATION OF CONTENTS OF RECORD
ON APPEAL UNDER RULE 75(a)

James A. Johnston, Warden of the United States Penitentiary at Alcatraz, California, the respondent herein, hereby designates the complete record and proceedings in the above-entitled cause for inclusion in the record on appeal, the same to include therein the following:

In case No. 23744:

1. Petition for writ of habeas corpus.
2. Writ of habeas corpus.
3. Return to writ.
4. Supplemental return to writ.
5. Traverse to return to writ.
6. Transcript of testimony of October 10, 1942 and October 17, 1942.
7. Opinion and Order of Circuit Judge William Denman of November 10, 1942.

8. Notice of Appeal.
9. Clerk's notice of appeal.
10. This Designation of contents of record.
11. Clerk's certificate. [190]

In case No. 23647-S:

1. Findings of fact and conclusions of law.
1. Deposition of Judge Walter C. Lindley.
3. Deposition of Harold J. Baker.
4. All of respondent's exhibit A.
5. Transcript of testimony taken in case No. 23647-S.

FRANK J. HENNESSY

United States Attorney.

A. J. ZIRPOLI

Assistant United States
Attorney,

Attorneys for Respondent
James A. Johnston

[Endorsed]: Filed Nov. 17, 1942. [191]

In the Southern Division of the United States
District Court for the Northern District of
California.

No. 23647-S

On Habeas Corpus

CECIL WRIGHT,

Petitioner,

vs.

JAMES A. JOHNSTON, Warden, United States
Penitentiary, Alcatraz, California,

Respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled cause having been submitted by the parties hereto, Cecil Wright appearing in person and without counsel and having specifically waived counsel and requested to appear and plead in propria persona, and Frank J. Hennessy, Esquire, United States Attorney for the Northern District of California, and Thomas C. Lynch, Esquire, and A. J. Zirpoli, Esquire, Assistant United States Attorneys for the Northern District of California, appearing as counsel for respondent; and evidence both oral and documentary having been introduced and the petitioner having been heard in person under a writ of habeas corpus duly issued, and the Court being fully advised in the pre- [192] mises, now makes its Findings of Fact and Conclusions of Law, as follows:

FINDINGS OF FACT

I.

That petitioner is a citizen of the United States.

II.

That petitioner is detained by respondent, James A. Johnston, as Warden of the United States Penitentiary at Alcatraz Island, California, under and by virtue of the judgments and sentences of the District Court of the United States for the Eastern District of Illinois (hereinafter called the Trial Court) in the cases of United States of America vs. Tuck Wright (Cecil Wright) No. 11032, and United States of America vs. Cecil Wright No. 11074, made and entered on the 17th day of September, 1930, and transfer order issued at Washington, D. C., on July 18, 1941, signed by Frank Loveland, Acting Assistant Director of the Bureau of Prisons of the Department of Justice, ordering the transfer of petitioner from the United States Penitentiary at Leavenworth, Kansas, to the United States Penitentiary at Alcatraz Island, California.

III.

That the sentence imposed by the Trial Court against petitioner in the aforesaid case number 11032, made and entered on September 17, 1942, provided for his imprisonment in the United States Penitentiary, Leavenworth, Kansas, for a period of five years on the first count of the indictment, three years on the second count and two years on

the third count from the date of the delivery of petitioner to the [193] keeper or warden of the said penitentiary, said sentences to run consecutively, with a proviso that petitioner pay a fine to the United States in the sum of \$10,000 and stand committed to the said penitentiary until the fine shall have been fully paid. The order of the Court in sentencing petitioner in this case further provided that the sentences imposed in the said case number 11032 shall begin on the expiration of the sentence which the petitioner was then serving in the Southern Illinois Penitentiary:

That the sentence imposed by the Trial Court in the aforesaid case, number 11074, on September 17, 1930, provided for the imprisonment of the petitioner for a period of five years, to be consecutive to and commence to run upon the expiration of the sentence imposed in case number 11032;

IV.

That the indictment in the aforesaid case number 11032 was in three counts and charged the petitioner with unlawfully breaking into and entering a building used as a Post Office, with intent to commit larceny in the said building used as a Post Office. The second count charged that the petitioner did take, steal and carry away from a building used as a Post Office, certain personal property of the United States, with intent to convert the same to his own use, and the third count charges petitioner with conspiracy to commit the offenses

alleged in the first and second counts of the indictment;

That the indictment in the aforesaid case, number 11074, charged the petitioner with having transported a stolen automobile in interstate commerce. [194]

V.

That the aforesaid indictments in cases numbered 11032 and 11074 were returned by the Grand Jurors of the Trial Court on the 5th day of June, 1930;

VI.

That on August 29, 1930, a writ of habeas corpus ad prosequendum issued as to petitioner Cecil Wright, who was then incarcerated in the Southern Illinois penitentiary for his appearance for trial on the aforesaid indictments before the Trial Court on September 16, 1930;

VII.

That from at least August 29, 1930, petitioner knew of the indictments pending against him and the fact that the same had been set for trial on September 16, 1930;

VIII.

That in the aforesaid indictment number 11032 four other persons were named as co-defendants with petitioner and at the time of petitioner's appearance before the Trial Court three of said co-defendants appeared in open Court with him for arraignment; that said three co-defendants who appeared with petitioner for arraignment on Septem-

ber 16, 1930, also appeared with him and were tried with him before the Trial Court and a jury on September 17, 1930;

IX.

That at the time of the arraignment of petitioner on Septem- [195] ber 16, 1930, in case number 11032 he was advised by the Judge of the Trial Court of the nature of the charges pending against him; that he pleaded "not guilty" to these charges; that the Trial Judge inquired of petitioner as to whether or not he was represented by counsel and when the petitioner stated that he was not represented by counsel and further advised the Court that he was without means to obtain counsel, the Trial Judge appointed J. D. Allen, Esquire, a duly qualified, competent and experienced Attorney-at-law, to represent petitioner;

X.

That said J. D. Allen, Esquire, was on said 16th day of September, 1930, also appointed by the Trial Court to represent, and did represent, the co-defendants of said Cecil Wright in said case number 11032;

XI.

That said J. D. Allen, Esquire, represented petitioner, conferred with him and on the following day, September 17, 1930, appeared as his counsel throughout the trial of petitioner;

XII.

That the petitioner did not at any time file any

affidavit requesting, or make any oral request for time to allow him to employ counsel;

XIII.

That at no time prior to the trial or in the course thereof did petitioner or any of his co-defendants object orally or in writing to the appointment of Mr. Allen as [196] their attorney nor did petitioner or any of his co-defendants at any time prior to the trial or in the course thereof express any desire for representation by any other counsel;

XIV.

That the only affidavit filed by petitioner was an affidavit filed on September 17, 1930, for a continuance of his trial in order to allow him to secure two named witnesses on his behalf;

XV.

That counsel for petitioner on September 17, 1930, moved the Trial Court of a continuance of the trial;

XVI.

That the Trial Court in the exercise of its discretion denied the motions of petitioner for a continuance of the trial because he thought that no legal ground for the continuance existed and because he believed that petitioner did not show due diligence in the making of his request for a continuance but waited until the day of the trial before making the same;

XVII.

That counsel for petitioner moved the Trial Court for a separate trial and the Trial Court in the exercise of its discretion denied the motion for a separate trial because it felt there was no justifiable ground therefor;

XVIII.

That at no time in the course of the trial did the United States Attorney request the Court to dismiss either [197] of the indictments pending against petitioner nor did the United States Attorney seek to enter a nolle prosequi as to the petitioner on either of the indictments;

XIX.

That on September 17, 1930, petitioner, while represented by counsel, entered a plea of guilty to the indictment in case number 11074 and was sentenced in the manner hereinabove set forth;

XX.

That the court reporter who reported the trial of the cause of petitioner in case number 11032 is now deceased and that no transcript of said trial was ever made;

XXI.

That petitioner was not received in a Federal penitentiary until November 1, 1939, and the serving of his sentences in the aforesaid cases numbered 11032 and 11074 did not commence to run until October 31, 1939;

XXII.

That petitioner has not served the said sentence imposed in the aforesaid cases numbered 11032 and 11074 and petitioner will not be eligible for conditional release for good time and extra good time credits earned until the 5th of November, 1949;

XXIII.

That petitioner prior to his conviction and sentence before the Trial Court had a criminal record including felony convictions. [198]

CONCLUSIONS OF LAW

I.

That petitioner has not sustained the burden of proving he was denied the right of assistance of counsel;

II.

That petitioner has not sustained the burden of proving he was denied due process of law by the Trial Court;

III.

That petitioner was not denied the right of assistance of counsel at any time during the course of the proceedings before the Trial Court and was there duly represented by counsel;

IV.

That petitioner was not denied due process of law;

V.

That there is no merit to the petition for writ of habeas corpus on file herein.

VI.

That petitioner is not now entitled to his discharge from the United States Penitentiary at Alcatraz, California.

Dated: Sept. 11, 1942.

A. F. ST. SURE

United States District Judge

[Endorsed]: Filed Sept. 11, 1942. [199]

[Title of District Court and Cause.]

DEPOSITION OF WALTER C. LINDLEY

Deposition of Walter C. Lindley, of the County of Vermilion and State of Illinois, a witness of lawful age, produced, sworn and examined on his corporal oath, on the 23rd day of July A. D., 1942, at the office of the United States Attorney, Federal Building, Danville, Illinois, in pursuance of Notice of Taking Deposition, dated July 17, 1942, as a witness in a certain suit and matter in controversy now pending and undetermined in the said District Court, in the Southern Division of the United States District Court, for the Northern District of California, wherein Cecil Wright, is Petitioner, and James A. Johnston, Warden, United States Penitentiary, Alcatraz, California, is Respondent, case No. 23647-S., on behalf of the Respondent herein, upon oral interrogatories. [200]

(Deposition of Walter C. Lindley.)

Appearances:

For Respondent:

United States District Attorney, for the
Eastern District of Illinois.

By: Ray Foreman, Esquire, Asst. U. S.
Attorney.

For Defendant: (Petitioner)

Petitioner not present and not represented
by Counsel.

WALTER C. LINDLEY

being first duly sworn by me as a witness in said
cause, previous to the commencement of his ex-
amination, to testify the truth, as well on the part
of Petitioner as the Respondent, in relation to the
matter in controversy herein, so far as he should
be interrogated, testified and deposed as follows:

Direct Examination

Mr. Foreman:

Q. State your full name.

A. Walter C. Lindley.

Q. Where do you live?

A. Danville, Illinois.

Q. What was your occupation in the year 1930?

A. United States District Judge for the Eastern
District of Illinois.

Q. Have you examined the records of the Clerk
of the United States District Court for the Eastern
District of Illinois in Criminal Case No. 11032?

A. I have.

(Deposition of Walter C. Lindley.)

Q. Have you an independent recollection, Judge Lindley, of the facts and circumstances which occurred at the [201] trial of the defendants in that case? A. I have.

Q. Do you recollect the appointment of the Attorney for the defendants in that case?

A. I do.

Q. What was his name? A. J. D. Allen.

Q. Will you describe Mr. Allen, in his capacity as a practicing attorney, Judge Lindley?

A. Mr. Allen was a regularly admitted, practicing lawyer, about fifty years of age, I should say. A student of the law, a competent, aggressive, reputable trial lawyer of a good many years experience, with a good knowledge of the law. He was a man of high character and stood for the highest ideals as a member of the colored race. He was one of the forces for the betterment of his race and a very creditable example of a competent trial lawyer.

Q. Had this attorney previously represented defendants in criminal cases in your Court?

A. He had, for a number of years, had considerable and extensive practice defending men charged with crime in my Court.

Q. Were objections made, by any of such defendants, either orally or in writing, relative to your appointment of Mr. Allen as attorney for said defendants, prior to your appointment of him as their attorney? A. No. [202]

(Deposition of Walter C. Lindley.)

Q. Were any such objections made by any of said defendants prior to the beginning of the trial of said defendants in that case? A. No.

Q. Were any objections made by any of said defendants to his appointment or his representation of any of said defendants during the trial of said case? A. No.

Q. Were any objections taken by any of said defendants to said Attorney's appointment or representation of them after the termination of said trial of said defendants?

A. Never, until I had Cecil Wright's petition in 1942.

Q. To what petition do you refer?

A. A petition I permitted him to file as a pauper in this Court, to vacate the judgment of conviction.

Q. Prior to the filing of said petition in this Court, had you received any written communications from the defendant, Tuck Wright, otherwise known as Cecil Wright, between the date of his conviction and the date of the filing of said petition in this Court? A. I had.

Q. Did defendant Tuck Wright, alias Cecil Wright, ever object or except to your appointment of Attorney J. D. Allen, as his representative in Case No. 11032, in any of said communications with you, prior to the filing of said petition to vacate?

A. No. I say that with this reservation. In the letters that I have in my file from him, I find no such ob- [203] jection at any time prior to the filing

(Deposition of Walter C. Lindley.)

of the petition in 1942, and my recollection is that at no time did he write to me complaining of the appointment of his Counsel or say anything about that matter before the petition of 1942.

Q. I call your attention to an exhibit, identified as Government's Exhibit No. 1-A. What is that, Judge Lindley?

A. That is a letter that purports to have been written on December 22, 1939 by Cecil Wright while he was confined in the penitentiary at Leavenworth, Kansas, to me.

Q. How did you receive it?

A. I received it through the United States Mail, in due course, and replied to it under date of December 26, 1939.

(Which said Government's Exhibit No. 1-A., is in words and figures following, to-wit:) [204]

GOVERNMENT'S EXHIBIT No. 1-A.

December 22-1939.

From: Cecil Wright, L. B. P. M. B. #55,980.

To: Hon. Judge W. C. Lindley, Federal Court
Bldg., Danville, Illinois.

Honorable Sir:

I am writing you with reference to my case and wish to advise that I was sentenced by you September 17, 1930. I was at that time confined in the State Prison at Menard, Illinois.

My committment here has a specification added and bracketed in, stating that my sentence starts

(Deposition of Walter C. Lindley.)

after the expiration of my state term. The bill of convoy also shows the same additional added sentence.

I wish to call to your attention some correspondence between you and I in the month of June 1935. I wrote you in regards to some advise concerning a Writ of Habeas Corpus in your Court. Your reply to me was, that you had lost jurisdiction in the case after the expiration of the term of Court in which I was convicted and especially after my sentence had begun. Your advice to me at that time, was to file application for a commutation of sentence.

At the time I was preparring my application forms, I had some "Photostatic" copies made and took the matter up with the late Senator James Hamilton Lewis. I also furnished him with a copy of the letter you wrote to me in June 1930. The late Senator Lewis took the matter up with:- Mr. James A. Finch, United States Pardon attorney. Mr. Finch forewarded the necessary [205] papers to me through the late Senator Lewis. I filled the forms out but they were destroyed by the prison authorities at Menard, Illinois. It appears to me that it would be necessary for a trial judge to consult the minutes of the court before addvissing me as to what procedure to take in the case.

Your Honor, I have been in prison almost ten years and I feel like I have served enough time for my wrong doings. I was young at that time and did not realize what I was getting into. I am not in any way connected or associated with the parties

(Deposition of Walter C. Lindley.)

here, that were sentenced on the same charge that have almost completed their term at this institution.

The record of the court shows that these men made a confession and then retracted their written statement. All I ask of you is—to go over your records and furnish the Warden of this institution a similar copy of the letter you wrote to me in June 1935 with reference to my case and sentence.

It is not my desire to go into court for an adjustment of the case, although there is a number of technicalities in the case due to the United States Supreme Court ruling and also that of the appeal Court, which makes the sentence illegal.

Any consideration shown me in regards to my own case will always be appreciated.

I am,

Obediently,

(Signed) CECIL WRIGHT

#55,980 P. M. B.

Leavenworth, Kansas [206]

Q. I now show you Government's Exhibit No. 1-B. Will you identify that, please?

A. This is a letter I received from Cecil Wright under date of April 2, 1942.

Q. How did you receive that letter?

A. Through the United States mail.

(Which said Government's Exhibit No. 1-B, is in words and figures following, to-wit:) [207]

(Deposition of Walter C. Lindley.)

GOVERNMENT'S EXHIBIT No. 1-B

From: Cecil Wright	April 2-42	Apr 3 1942
579 P. M. B.	Date.	R.R.B.

To: Hon. Walter C. Lindley, Fed. Dist. Ct., Dan-	
ville. Ill.	Address

Honorable Sir:

I have filed a Motion to Vacate Judgment and Sentence in case No. 11032, with the Clerk of the Court. This motion does not apply to the five year sentence in case No. 11074.

I have filed the motion in propria persona and no counsel will appear for me; and it is my desire to have the motion heard and determined from the contents therein.

I would like to state that after my conviction in case No. 11032, I have lived and abided by the rules and regulations of the various penitentiaries in which I have been continuously imprisoned under a judgment of convictions since September 17, 1930.

Of course your Honor may feel that my incarceration in Alcatraz has no doubt come about from some sort of disorder; but that is not true as my being in Alcatraz is only from the results of Habeas Corpus proceedings filed in the District of Kansas.

The case No. 11032 set forth in my motion is obviously unconstitutional and void; it is not only void for the reason that my constitutional rights were denied, but the sentence is void by lapse of time.

It is not my desire to put the government to the

(Deposition of Walter C. Lindley.)
expense of a new trial, but I am entitled to a new trial and no [208] doubt can obtain the same on appeal if the same is denied by Your Honor.

Thanking you in advance for your kind and careful consideration of this matter, I humbly express my appreciation to your Honorable Court, I am

Obediently,
(Signed) CECIL WRIGHT,
#579 P. M. B.
Alcatraz, California. [209]

Q. You have received other letters in addition to those identified by you as Government's Exhibits Nos. 1-A and 1-B?

A. Yes, sir. From time to time, over the years, Mr. Wright has written me. He wrote me shortly after his conviction, requesting a reduction of sentence and I advised him that I could not modify his sentence; that the term had expired; that his sentence had begun and that his recourse lay in application for executive clemency, or when he should become eligible, in an application for parole to the Parole Board. Some of these letters were long and they contained nothing other than is reflected in the two letters I have identified.

Q. Were any statements made by Tuck Wright, alias Cecil Wright, in any of such additional letters, relative to your appointment of Counsel for him during the trial of this case?

(Deposition of Walter C. Lindley.)

A. Never until his application of 1942. Referring to his letter of April 2, 1942, Government's Exhibit No. 1-B, Mr. Wright's attitude apparently, until this year, was disclosed by his letter of December 22, 1939, wherein he said he had been in prison almost ten years and felt he had served enough time for his wrongdoing. He said in that letter that he was young at the time and did not realize what he was getting into. This appears on the second page of his letter of December 22, 1939, Government's Exhibit 1-A, in the second paragraph. [210]

Q. Did the defendant, Tuck Wright, alias Cecil Wright, at any time prior to or during the course of the trial of said case, request the appointment of an attorney other than Mr. Allen to represent him in said trial? A. No.

Q. Did the defendant, Tuck Wright, alias Cecil Wright, at any time prior to or during the course of the trial of said case, request the opportunity to employ separate counsel to represent him in said trial? A. No.

Q. Have you a recollection, Judge Lindley, of the events which occurred at the time of your appointment of Mr. Allen as Attorney for the several defendants in Case No. 11032?

A. Yes, sir.

Q. Will you kindly state the events which occurred at that time?

A. When Wright was arraigned, he was advised

(Deposition of Walter C. Lindley.)

that he might plead guilty or not guilty. That, if he plead guilty, it would be the Court's duty to sentence him. If he plead not guilty, he would be entitled to a trial, either by jury or before the Court. In response to the arraignment and these suggestions from the Court, Wright entered a plea of not guilty. As presiding Judge, I then inquired of him as to whether he had Counsel, and advised him he was entitled to Counsel. He replied that he had not. I inquired as to whether he had funds with which to procure Counsel. He assured me he had none. I asked him if there were any means by which he [211] could obtain Counsel. He assured me that there were not. I therefore appointed Mr. Allen, who happened to be in the Court Room, awaiting another matter, and I asked him if he would be willing to undertake to defend the defendants in the case. Mr. Allen graciously accepted the responsibility. No objection was made by any defendant. I directed the United States Attorney to give Mr. Allen full access to all of the file, disclosing all evidence against the defendants, and the United States Attorney complied with the request. When the case came on for hearing before the jury, the jury was selected in the ordinary manner and Mr. Allen defended throughout the trial, making such defense as he could under the facts presented, and appealed to the jury for an acquittal.

Q. Were any documents or pleadings of any nature prepared by Mr. Allen, as Attorney for Tuck Wright, alias Cecil Wright?

(Deposition of Walter C. Lindley.)

A. The only motion or pleading filed was an affidavit of Wright, asking for a continuance. I think a copy of it appears in the transcript.

Q. Were any oral motions made by this Attorney in behalf of defendant, Cecil Wright?

A. None other than the motion for a separate trial and such other motions as were made during the course of the trial by objections to testimony, or motions to strike, and a motion for an additional charge to the jury. [212]

Q. Do you have any independent recollection of any such additional motion?

A. Yes, sir. My recollection is that Mr. Allen suggested that I had overlooked charging the jury as to the effect of the statements of the respective defendants. I thought I had fully explained that to the jury, but, upon his suggestion, I again charged the jury, as he moved that I should, that no confession was binding upon any person other than the one who made it, and that it was not to be considered as evidence against any other defendant.

Q. Was there an official reporter employed in the United States District Court, for the Eastern District of Illinois, at the time of the trial of this case?

A. No, sir.

Q. Was a reporter available to take the testimony in cases in such Court, when especially employed to do so?

A. Yes, and even when defendants on trial requested a court reporter and had no funds with which to hire him.

(Deposition of Walter C. Lindley.)

Q. Was any request made by any of the defendants in Case No. 11032 for the reporting of the testimony in the case?

A. I am not certain but my best recollection is that there was and that Mr. Gannon took the evidence. I may be mistaken about this.

Q. Where is Mr. Gannon at the present time?

A. He died a number of years ago.

Q. Was the report of this testimony, if taken, ever transcribed? [213]

A. Not that I ever heard of or knew.

Q. Was there ever any request made in this case for the transcription of said testimony, if such was taken?

A. Not until after Mr. Gannon had died, and then only by inference in that petition—the petition of 1942.

Q. In the trial of Case No. 11032, did the United States District Attorney, at any time during the trial of said case, request the Court to dismiss the indictment as against the defendant, Tuck Wright, alias Cecil Wright? A. No.

Q. Was any motion of any similar character made by the United States District Attorney, or any Assistant United States Attorney, during the trial of said case?

A. No, and I might add that I have always believed it to be the law that the United States Attorney may nolle pross or dismiss an indictment, irrespective of the Court's desire; in other words upon

(Deposition of Walter C. Lindley.)

motion of the United States Attorney to nolle pross or dismiss an indictment, the Court must grant that motion, and that rule I have consistently followed. I am sure no such motion, or as Mr. Wright puts it in one of his letters to 'squash the indictment' was ever made.

Q. Can you tell us, Judge Lindley, why there was a denial of the motions for continuance and for severance by the defendant, Tuck Wright, alias Cecil Wright? [214]

A. The motion for continuance was denied because I thought that no legal ground for continuance existed. The affidavit disclosed that defendant was evidently aware of the indictment against him as he said that he had attempted to write to two witnesses, but that the authorities at the State Penitentiary did not let his letters go out, but he did not show that from the time he acquired knowledge of the indictment up until the time of the trial, he made any other effort or attempt to get in contact with witnesses or arrange for their presence, or subpoena them. He consulted no lawyer; he wrote no lawyer. He did not write the Judge or the United States Attorney, but waited until the time of his trial, and then made an application for continuance. I believed he had not shown due diligence. If I erred, it was because I believed that fact.

As to the motion for severance, I thought that inasmuch as these defendants had been indicted to-

(Deposition of Walter C. Lindley.)

gether, as co-defendants, inasmuch as they were charged with conspiracy jointly, the Government should not be put to the expense of more than one trial before one jury. I believed that I could adequately protect the rights of each defendant by my charge to the jury, and this I attempted to do, and, in my discretion, therefore I denied the motion. If you will permit me, I will have you incorporate in the record a copy of my letter to Mr. Wright under date of December 26, 1939, and that [215] of January 22, 1940.

Mr. Foreman: Such documents may be identified as Government's Exhibits Nos. 1-C and 1-D, Exhibit 1-C being the letter of December 26, 1939, and exhibit No. 1-D, the letter of January 22, 1940.

(Which said Government's Exhibits Nos. 1-C and 1-D, so marked for identification, and so identified, are in words and figures following, to-wit:) [216]

GOVERNMENT'S EXHIBIT No. 1-C.

Mr. Cecil Wright,
#55980 P. M. B.,
Leavenworth, Kansas.

Dear Sir:

I have your letter of December 22. As I have previously advised you, the jurisdiction of a trial judge over a case ends when sentence begins. He has no more power of authority over your sentence than the man of the street. Your remedy, as I

(Deposition of Walter C. Lindley.)

previously advised you, lies in petition for parole or petition for commutation of sentence. Relief under each of these must be made by authorities other than the court.

I do not understand how it could be that prison authorities at Menard destroyed your papers, and I am sure that if you consult the warden at Leavenworth you will be furnished with authority to make proper application for parole or for executive clemency. On the former, the Parole Board acts and on the latter, the President through the Department of Justice acts, and obviously, each of these authorities is wholly outside the Court.

Yours very truly,

WCL:J [217]

GOVERNMENT'S EXHIBIT No. 1-D

January 22, 1940.

Mr. Cecil Wright,
#55,980 Box No. P. M. B.,
Leavenworth, Kansas.

Dear Sir:

The law is, as I have previously said, that once a defendant has entered upon the service of his term, the trial court has no more jurisdiction over him than the man in the street. It is not necessarily the expiration of the term at which the trial occurred that terminates the jurisdiction,—it is the commencement of the execution of the sentence. The

(Deposition of Walter C. Lindley.)

Supreme Court of the United States has many times so decided. The only exception to this rule occurs where the trial court suspends at least a part of the sentence for a definite period in the future and retains jurisdiction. As this did not occur in your case, my power is at an end and your remedy lies with the executive authorities for executive clemency or parole.

If you believe that your incarceration is wrongful under the constitution, you have a right to test it by habeas corpus proceedings in the United States Court where you are located, but you cannot proceed here.

Obviously, I cannot accede to your statement that you were deprived of your constitutional rights. Every defendant in this court is advised of the charge against him. He may plead [218] guilty or not guilty. If he pleads not guilty and has no funds, a lawyer is assigned to defend him. If he has material witnesses whose presence he cannot secure, the United States statutes furnish him with relief through government advancement of funds to secure the witnesses.

Further communication to me will be of no avail because, as I have assured you, there is nothing I can do for you.

Yours truly,

United States District Judge.

WCL:J [219]

(Deposition of Walter C. Lindley.)

A. I might add that I have read Mr. Wright's several petitions and letters, and that I never knew of the present objections until early in 1942. My feeling, upon an analysis of his letters in the past and the recent change in position, is that brooding over his sentence, he has come to believe that certain things occurred which never existed. Obviously, the sentence I gave him was somewhat severe. Yet, in my discretion as trial Judge, I believed the facts and circumstances to be such as to justify the sentence.

And further deponent sayeth not.

(Signed) WALTER C. LINDLEY [220]

CERTIFICATE

State of Illinois

Vermilion County—ss.

I, Gertrude Downey, A Notary Public within and for the County of Vermilion and State of Illinois, the officer acting by virtue of authority in Notice to Take Deposition, the original of which is hereto attached and made a part hereof, in the taking of the deposition of said Walter C. Lindley, the witness, do hereby certify that previous to the commencement of the examination of said Walter C. Lindley, as witness in the cause entitled Cecil Wright, Petitioner, vs. James A. Johnston, No. 23647-S, he was duly sworn to testify the truth in relation to the matter in controversy between the above named Petitioner and Respond-

(Deposition of Walter C. Lindley.)

ent, so far as he should be interrogated concerning the same; that said deposition was taken down by me in shorthand, at the office of the United States Attorney for the Eastern District of Illinois, in the Post Office, at Danville, Illinois, on the 23rd. day of July, A. D., 1942, commencing at the hour of 10:00 A. M. of said day; that said deposition was taken upon oral interrogatories propounded by Ray Foreman, Esquire, Assistant United States Attorney, and said interrogatories, and the answers thereto, were reduced to writing by me, and the foregoing deposition is a full, true and correct transcript of the testimony of said witness, given at the time and place aforesaid, and in the order in which said oral [221] interrogatories and the answers thereto were given.

That the signature of said witness is the genuine signature of said witness, Walter C. Lindley:

I further certify that I am not of counsel or attorney for either party in said cause, and am not interested in the outcome of said case.

I further certify that my commission expires on the 14th. day of October, A. D., 1943, and is, at the time of the making of this certificate, in full force and effect.

Given under my hand and Official Seal, at Danville, Illinois, this 25th. day of July, A, D., 1942.

[Seal]

GERTRUDE DOWNEY

Notary Public.

My Commission expires: October 14, 1943. [222]

(Deposition of Walter C. Lindley.)

[Title of District Court and Cause.]

NOTICE OF TAKING DEPOSITION

To Cecil Wright, Petitioner:

You will please take notice that on Thursday, July 23, 1942, at 10:00 o'clock A. M. the deposition of Walter C. Lindley, United States District Judge for the Eastern District of Illinois, will be taken before Gertrude Downey, Notary Public, or any other Notary Public of competent authority who is not of counsel or attorney for either party or interested in the outcome of the case, at the office of the United States Attorney for the Eastern District of Illinois, Danville, Illinois;

That said deposition is to be taken upon oral interrogatories and pursuant to the provisions of the Revised Statutes of the United States and the Rules of Civil Procedure for the District Courts of the United States adopted by the Supreme Court of the United States pursuant to the Act of June 19, 1934, Chapter 651, and will begin, as above stated, at 10:00 o'clock A. M. of said day and will continue from day to day thereafter until completed, transcribed, signed and properly attested to. It shall then be forwarded by said Notary Public to the Clerk of the United States District Court, Southern Division of the Northern District of California, San Francisco, California, under the proper case heading and number as above set out.

(Deposition of Walter C. Lindley.)

Dated: July 17, 1942.

FRANK J. HENNESSY

United States Attorney

[Endorsed]: Filed Aug. 13, 1942. [223]

[Title of District Court and Cause.]

DEPOSITION OF HAROLD G. BAKER

Deposition of Harold G. Baker, of the County of Saint Clair and State of Illinois, a witness of lawful age, produced, sworn and examined on his corporal oath, on the 29th day of July, A. D., 1942, in pursuance of Notice of Taking Deposition, dated July 24, 1942, to be continued from day to day until the completion of said Deposition, which said Deposition was continued by me on July 24, 1942, to July 29, 1942, at the office of the United States District Judge, Federal Building, East St. Louis, Illinois, as a witness in a certain suit and matter in controversy now pending and undetermined in the said District Court, in the Southern Division of the United States District Court, for the Northern District of California, wherein Cecil Wright is Petitioner, and James A. Johnston, Warden, United States Penitentiary, Alcatraz, California, is Respondent, case No. 23647-S., on behalf of the Respondent herein, upon oral interrogatories. [224]

Appearances

For Respondent:

H. Grady Vien, United States District Attorney, for the Eastern District of Illinois; and
Ray Foreman, Assistant United States District Attorney for the Eastern District of Illinois.

For Defendant: (Petitioner)

Petitioner not present and not represented
by Counsel.

HAROLD G. BAKER

being first duly sworn by me as a witness in said cause, previous to the commencement of his examination, to testify the truth, as well on the part of Petitioner as the Respondent, in relation to the matter in controversy herein, so far as he should be interrogated, testified and deposed as follows:

Direct Examination

By Mr. Vien:

Q. State your name, please.

A. Harold G. Baker.

Q. What is your business? A. Lawyer.

Q. Your offices are where?

A. Murphy Building, East St. Louis, Illinois.

Q. How long have you been practicing law?

A. I was admitted in 1921.

Q. Where have you practiced since that time?

A. In East St. Louis. [225]

(Deposition of Harold G. Baker.)

Q. What has been the nature of your practice since 1921, Mr. Baker?

A. I was in the general practice of the law with my father for a time after I was admitted to the Bar. I was then in the firm known as Keefe, Baxter, Miller and Baker which represented various railroads and corporations. In 1926, I was appointed United States Attorney for the Eastern District of Illinois and served and devoted my full time to those duties until 1931. In 1931, Mr. Lesemann, who had been my chief assistant while I was United States Attorney, and I started the practice of law together, the firm being Baker and Lesemann. Subsequently, other members were admitted to the firm and it is now composed of Baker, Lesemann, Kagy and Wagner. We are engaged in the general practice representing such concerns as the Southern Illinois National Bank, the Western Union Telegraph Company, Aetna Casualty and Insurance Company, Western Insurance Company and concerns of that sort.

Q. You have had extensive practice in the Federal Court in the Eastern District of Illinois?

A. Yes, both before and after I was United States Attorney.

Q. You have represented defendants in criminal cases?

A. Yes, sir, numerous criminal cases. [226]

Q. During the time you were United States

(Deposition of Harold G. Baker.)

Attorney from 1926 to 1931, what was the nature of the work you personally did in the office?

A. I handled cases from the time a complaint was received in the office, drafted informations and indictments and handled the matters before the grand jury and tried cases myself. There were, at that time, two assistants who were also engaged in the same sort of work. One in Danville and one in East St. Louis. Mr. John Speakman, who died a few months ago was the assistant at Danville and Mr. Ralph Lesemann, now one of my law partners, was the assistant at East St. Louis.

Q. In the case of the United States of America versus Cecil Wright, Number 11032, did you personally handle any part of that case?

A. My recollection is, Mr. Vien, I handled the entire matter from the time the first reports of the burglary at Strasburg were received until conviction and the last official act I think I performed in the case was in submitting the parole reports in accordance with the procedure then in force and those were dictated by me.

Q. Was there other defendants?

A. Yes. My recollection is there were numerous other defendants [227] and the question arose at the inception as to who would be charged with the various offenses. These men had been arrested, as I recall, in Decatur, Illinois, which is in the Southern District of Illinois, in possession of rifles, field glasses and automatic pistols which had been stolen

(Deposition of Harold G. Baker.)

from the armory at Sullivan, Illinois, which is in the Eastern District of Illinois, and subsequently some of them were identified as having been engaged in the robbery of the post office at Strasburg and others were found in the possession of a stolen automobiles with the result that we divided the charges and indicted one group for the Strasburg robbery and I think two other individuals for the theft of the automobile and their transportation of the automobile in interstate commerce.

Q. Was Cecil Wright one of the defendants in that case?

A. Yes, my recollection is that Cecil Wright was indicted in the Strasburg robbery, in case number 11032, and also indicted for the transportation of the stolen automobile, having been arrested in the stolen automobile at Gary, Indiana, and that was case number 11074, I think.

Q. Did you personally participate in the trial of Case Number 11032?

A. The files of the United States Attorneys Office, which I have examined, show on the file cover in my own hand writing [228] the arraignment, the appointment of counsel, and also show the name of the judge before whom the case was heard and the fact that there was a trial by jury, and the sentence. Also on that file is a notation in the hand writing of William C. Ingram, which I recognize, showing the defendants were notified on August 29, 1930 that the case was set for trial on September

(Deposition of Harold G. Baker.)

17, 1930. Certain of the defendants were in various penitentiaries. Monte Crist was in the Indiana State Penitentiary at Michigan City, Indiana, and it was necessary for us to secure a writ of habeas corpus ad prosequendum. This issued sometime in the summer of 1930 and Governor Leslie of Indiana refused to allow the Warden to recognize the writ.

Q. Who was William C. Ingram?

A. Assistant United States Attorney. Prior to his being admitted to the bar he had been chief clerk in the United States Attorney's office but my recollection is that by 1930 he had been admitted to the bar and upon his admission he was appointed as an assistant United States Attorney, performing the duties of chief clerk in the office of the United States Attorney.

Q. Do you have a recollection of the actual trial of this case, Mr. Baker? [229]

A. Yes, I recall the defendants were arraigned on the 16th of September, 1930; that Judge Lindley advised them as to their right and as to his duties in the event a plea of guilty was entered and their right to counsel. They advised the court they were without counsel and Judge Lindley appointed J. D. Allen of Danville to represent them.

Q. Was he appointed to represent all of them?

A. That is my recollection.

Q. What day was he appointed?

A. September 16, 1930.

(Deposition of Harold G. Baker.)

Q. What was the date of the trial?

A. September 17, 1930.

Q. Were the defendants in court at the time Mr. Allen was appointed?

A. Yes, Mr. Allen was appointed at the time of their arraignment, I believe. He was there at the time of the arraignment and at the trial.

Q. Did they make any objection concerning Mr. Allen's appointment at the time it was made?

A. None that I recall.

Q. Do you know whether the defendants, including Cecil Wright, conferred with Mr. Allen in regard to the case?

A. Mr. Allen conferred with the defendants immediately after [230] his appointment and came to the office of the United States Attorney which was down the hall from the court room at Danville, and asked to see certain portions of the file and we gave him the information he desired and whether he went back and discussed the matter with them in the afternoon, I wouldn't know, but I imagine he did.

Q. Did you know J. D. Allen prior to his appointment in this case?

A. Yes, for four or five years prior to the time of this incident.

Q. Had he ever appeared in the Federal Court of the Eastern District of Illinois representing defendants in criminal cases prior to that time?

A. Yes, he had an extensive practice in Dan-

(Deposition of Harold G. Baker.)

ville and the surrounding territory and had appeared in civil matters and criminal matters in the Federal Court.

Q. What would you say was the character and standing of Mr. Allen as a member of the bar of the Federal Court at that time?

A. I have and had the highest regard for his honesty and integrity and his ability as a lawyer. He always protected his client's interests and he knew the law and was adept in following it in a given case. He was a good lawyer.

Q. Was any objection made by Cecil Wright to you or to Judge [231] Lindley prior to the time of the commencement of the case concerning the appointment of J. D. Allen as attorney for Cecil Wright?

A. None. No representation was made to me and none to Judge Lindley to my knowledge indicating that Cecil Wright was dissatisfied with the appointment of Mr. Allen.

Q. Were any objections made by Cecil Wright during the trial of the case?

A. None. He made no objection whatever to the appointment or the action of Mr. Allen. The first knowledge I had of this matter was when you gentlemen advised me of the fact you wanted to take my deposition, which was about a week or two ago. In the meantime I have had an opportunity to go into the correspondence between Cecil Wright and myself while he was incarcerated in

(Deposition of Harold G. Baker.)

the Southern Illinois Penitentiary and in none of the correspondence did he ever protest about the action of the trial court and the first knowledge I had of the charges he now makes, as I said, was about two weeks ago.

Q. Did Cecil Wright ever make any objection or criticism to you personally or by letter of the method of the conduct of the trial by his attorney, Mr. Allen?

A. No and he had ample opportunity so to do over a long period [232] of time because as I said awhile ago, there was some correspondence with him and my recollection is that he wrote a letter to Prat Taylor, who was then a Deputy United States Marshal, concerning certain of the crimes which had been committed by the gang he had been associating with, which letter, according to the records in the file, I forwarded to K. P. Aldrich who was then Post Office Inspector in charge at Chicago and who is now Chief Post Office Inspector. I also recall, after reviewing the file, Wright wrote me about certain crimes with which he was associated and I referred his letters to the Special Agent in charge of what was then the Bureau of Investigation of the Department of Justice in St. Louis.

Q. Did Cecil Wright, to your knowledge, ever request the appointment of any other attorney?

A. No, sir.

Q. What would you say as to the conduct of

(Deposition of Harold G. Baker.)

the trial of Cecil Wright by J. D. Allen as to whether he had a fair trial?

A. In my opinion, he did have a fair trial. In my opinion, Mr. Allen protected the interest of Cecil Wright throughout the entire trial.

Q. Did Mr. Allen ever make a motion for a continuance of the trial of the case?

A. My recollection is that Mr. Allen came in on the morning of [233] the trial, which was some 24 hours after he had been appointed and stated to the Court, on behalf of the defendant Wright, he wished to move for a continuance and presented some sort of affidavit. The matter was argued before Judge Lindley and I resisted the motion because as I say, he had had several weeks at least to prepare for the trial, having been notified in August as to the date the case was set for trial, and subsequently, it is my recollection, immediately after the motion for continuance was denied, Mr. Allen made an oral motion for a severance and Judge Lindley said at that time that he would keep in mind the situation which Mr. Allen presented and did so in his charge to the jury.

Q. Was there a motion to "squash" filed by Mr. Allen on behalf of his client?

A. No, no demurrer to the indictment or any motion of that nature was ever filed.

Q. The indictment was never attacked in any manner, shape or form?

(Deposition of Harold G. Baker.)

A. That's my recollection, either in Case Number 11032 or the companion cases.

Q. And was any motion made by you, as United States Attorney at the close of the plaintiff's case or at the close of all the evidence to "squash" the indictment or dismiss the case as to Cecil Wright and discharge him? [234]

A. No, no such motion was ever made by me in this matter and there is no recollection on my part and no indication in or on the file that I ever made any motion to dismiss or nolle as to Cecil Wright.

Q. Mr. Baker, you have made a close examination of the files of the office of the United States Attorney in case Number 11032 and the companion case Number 11074 and also the court files in the office of the clerk of this Court have you not?

A. Yes, Mr. Vien. After you advised me you wanted to take my deposition, at my request you made available to me the files that started during my term as United States Attorney in cases number 11032 and 11074, the latter being the second case in which certain of the defendants in 11032 were charged with the violation of the National Motor Vehicle Theft Act and in which the defendants, including Cecil Wright, entered a plea of guilty after the verdict of the jury had been entered in 11032.

Mr. Vien: That is all.

HAROLD G. BAKER. [235]

CERTIFICATE

State of Illinois,
Saint Clair County—ss.

I, Walter Elliott, a Notary Public within and for the County of Saint Clair and State of Illinois, the officer acting by virtue of authority in Notice to Take Deposition, the original of which is hereto attached and made a part hereof, in the taking of the deposition of said Harold G. Baker, the witness, do hereby certify that previous to the commencement of the examination of the said Harold G. Baker, as witness in the cause entitled Cecil Wright, Petitioner vs. James A. Johnston, No. 23647-S, he was duly sworn to testify the truth in relation to the matter in controversy between the above named Petitioner and Respondent, so far as he should be interrogated concerning the same; that said deposition was taken down by me in shorthand, at the office of the United States District Judge for the Eastern District of Illinois, in the Post Office, at East St. Louis, Illinois, on the 29th day of July, A. D., 1942, commencing at the hour of 11:00 A.M. on said day; that said deposition was taken upon oral interrogatories propounded by H. Grady Vien, Esquire, United States Attorney, and said interrogatories, and the answers thereto were reduced to writing by me, and the foregoing [236] deposition is a full, true and correct transcript of the testimony of said witness, given at the time and place aforesaid, and in the order in which said oral interrogatories and the answers thereto were given.

That the signature of said witness is the genuine signature of said witness, Harold G. Baker:

I further certify that I am not of counsel or attorney for either party in said cause, and am not interested in the outcome of said case.

I further certify that my commission expires on the 27th day of September, 1942, and is, at the time of the making of this certificate, in full force and effect.

Given under my hand and Official Seal, at East St. Louis, Illinois, this 31st day of July, A. D., 1942.

[Seal]

WALTER ELLIOTT

Notary Public.

My commission expires: September 27, 1942.

[Endorsed]: Filed August 3, 1942 [237]

RESPONDENT'S EXHIBIT A
(No) 23647-S

In the District Court of the United States
For the Eastern District of Illinois
Criminal Docket

Docket 11032

Title of Case.

THE UNITED STATES

vs.

ROBERT RAYMOND

CARL SANDERS

JOSEPH HARTMAN

MONTE CRIST

TUCK WRIGHT—whose true Christian name is
to the Grand Jurors unknown.

Strasburg Shelby Co. Bond \$10,000

Indictment—
Postal Law

Attorneys

For U. S.:

Harold G. Baker

For Defendant:

J. D. Allen

Abstract of Costs.	Amount.
	10000 “
	10000 “
Fine,	10000 “
	10000 “

Respondent's Exhibit A—(Continued)

Clerk,
 Marshal,
 Attorney,
 Commissioner's Court,
 Witnesses,

Month.	^{Date} Day. Year	Proceedings
Jun	5 1930	Enter return of Indictment — File Indictment
"	" "	Enter Order B. W. Issue B. W.
Aug	29 "	File two praecipes—issue 2 subpoenas
"	" "	Enter order for writ of Habeas Corpus ad Prosequendum for Monte Crist from Indiana State Penn to Danville Sept. 17, 1930 and return
"	" "	Enter Order for Writ of Habeas Corpus ad Prosequendum for Carl Sanders, Robert Raymond, Joseph Hartman & Tuck Wright from So. Ill. Penn. to Danville Ill. Sept. 17-30 and return
Sept.	8 "	File subpoena. Service on Rono Keefe 9/2/30
"	16 "	Enter plea of not guilty, Robert Raymond, Carl Sanders, Joseph Hartman and Tuck Wright. [238]

Respondent's Exhibit A—(Continued)

Month.	Date Day. Year	Proceedings
Sept.	16, 1930	Atty. J. D. Allen appointed to defend.
"	17 "	File return on Writ of Habeas Corpus ad Pros.
"	17 "	Enter proceeding of trial by jury of Defendants Robert Raymond, Carl Sanders, Joseph Hartman, Tuck Wright.
"	17 "	Enter Verdict of Jury, guilty as to each Defendant and Sentence
"	17 "	Each Defendant 5 yrs. on 1st count, 3 yrs on 2nd count and 2 yrs on 3rd count, in the U. S. Penn. at Leavenworth and fined \$10,000.00. All sentences to be served consecutively and begin on their release or discharge from the So. Ill. Penn.
"	17 "	Issue certified copy of sentence.
"	17 "	Issue Warrant to Convey.
"	18 "	File Subpoena, due service on Wm. Wilson, Otto Wirth, Wm. Foster, Ralph Terry 9/1/30. Returned unexecuted as to Walter C. Bisson
Dec.	5, "	Strike with leave to reinstate as to Dft. Monte Christ

Respondent's Exhibit A—(Continued)

Month.	Date Day. Year	Proceedings
Jan.	16 1931	File B. W. ret's unexecuted—sentenced 9/7/30.
June	22 1934	File petition for modification of sentence and/or probation—Jos. Hartman (see also 11073)
“	22, “	Enter hearing on said Petition. Same denied.
Sept.	17 1930	Issue warrant to convey Robert Raymond.
(Con't to Page 504)		
Case #	11032	The U. S. vs. Robert Raymond, et al.
Nov.	15 1934	File Warrant to Convey Dft. Robert Raymond del to U. S. Pen. at Leavenworth, Kansas on 11/13/34.
“	7 1939	File certified copy of Sentence—duly executed by delivering Tuck Wright to U. S. Pen at Leavenworth, Kansas on November 1, 1939.
June	19, 1941	File Motion & Affidavit for transcript of Record to be furnished in Forma Pauperis.
“	“ “	Enter Order for Clerk to submit transcripts without payment of fees which is to be charged to Constructive Earnings.

Respondent's Exhibit A—(Continued)

Month.	Date Day. Year	Proceedings
July	3, 1942	File Memo of Findings & Conclusions upon Motion to vacate Judgment—Cecil Wright—Motion denied.

[239]

(Here follows copy of Indictment which was previously set out at pp. 120-124 of this printed record.) [240]

In the District Court of the United States
For the Eastern District of Illinois
Tuesday, September 16, 1930

Present: Honorable Walter C. Lindley,
Judge.

No. 11032

THE UNITED STATES

vs.

ROBERT RAYMOND, CARL SANDERS, JOSEPH HARTMAN AND TUCK WRIGHT

INDICTMENT

VIOLATION POSTAL LAWS

And Now on this 16th day of September, A. D. 1930, comes the United States, the plaintiff in this case, by Harold G. Baker, United States Attorney for the Eastern District of Illinois, and comes also the defendants Robert Raymond, Carl Sanders, Joseph Hartman and Tuck Wright each in person. And the said defendants being arraigned on

Respondent's Exhibit A—(Continued)
 the indictment herein for plea thereto, each says that he is not guilty as therein charged; and now it appearing to the court that the said defendants are without legal counsel to defend them and are unable to secure such counsel, it is ordered by the Court that J. D. Allen, an attorney and counsellor of this court, be and he is hereby appointed to defend the said Robert Raymond, Carl Sanders, Joseph Hartman, and Tuck Wright. [241]

* * * * *

THE JURY'S VERDICT

We, the Jury find the defendants Carl Sanders, Tuck Wright, Joe Hartman and Bob Raymond guilty in manner and form as charged in the indictment.

No. 11032

(Signed) D. C. BURROW

Foreman

“ S. S. WILSON
 “ MARK W. WISEMAN
 “ G. W. GILLILAND
 “ J. W. SNIDER
 “ CHARLES TILTON
 “ H. R. BOESCHEN
 “ OSCAR FORTH
 “ D. E. FRITZ
 “ WM. BASINGER
 “ HARRY BEARD
 “ STEPHEN GANNON

[Endorsed]: [242]

Respondent's Exhibit A—(Continued)

(Here follows copy of Order of the Trial Court made on September 17, 1930, previously set out at pp. 60-61 of this printed record.)

[243]

(Here follows affidavit of Tuck Wright previously set out at pp. 110-112 of this printed record.) [244]

In the District Court of the United States
For the Eastern District of Illinois

No. 11032

UNITED STATES OF AMERICA

vs.

CECIL WRIGHT

Lindley, Judge.

MEMORANDUM OF FINDINGS AND CON-
CLUSIONS UPON MOTION TO VACATE
JUDGMENT.

The court has examined the motion of defendant Cecil Wright to vacate the original judgment entered September 17, 1930, as well as his application for leave to file the same as a poor person.

The leave to file the motion as a poor person is allowed.

The motion to vacate the judgment is denied.

Nothing occurred at the time of the trial justifying the allegations of fact made by defendant.

Respondent's Exhibit A—(Continued)

Counsel appointed to represent him, though colored, was a reputable, capable and experienced member of the bar. He was given full access to all of the information in the files of the United States Attorney with regard to each defendant. There appeared a transcript of the statements of all witnesses. Thus defendant and counsel were fully advised as to just what would be presented against defendant.

The evidence disclosed that defendant participated in banditry and robbery with the use of a sawed off shot gun and other lethal instruments; that he and his associates overpowered and tied up the watchman and policeman and disclosed and exercised a lawless intent of most serious character. The jury heard the evidence. Each defendant was identified. There was no question as to guilt and the jury could have reasonably returned no other verdict. [245]

In the companion case No. 11074, Wright entered a plea of guilty and received a sentence of five years, made to run consecutively to that imposed in this cause.

Defendant insists that the sentence is void and, therefore, may be vacated, but there is nothing to sustain this assertion.

The circumstances were such as the court believed justified it in denying the motion for continuance and for a separate trial. If error actually occurred, defendant's remedy lay in an appeal.

The court made no agreement of any character

Respondent's Exhibit A—(Continued)

with defendant or his counsel to the effect that if other defendants would plead guilty, defendant would be acquitted. The allegation is pure fabrication.

The confessions of other defendants were received as evidence only against those making them and the jury was expressly so instructed.

The judgments are in the exact form they were entered on the date of entry. There has been no post-dating and no modification. The record speaks for itself.

Defendant has untrammelled and unimpaired assistance from reputable counsel who served him faithfully and properly protected in full all of his rights.

There was no instruction to the jury that defendant should be found guilty but the jury was instructed that each defendant was to be tried only upon the evidence submitted against him and that he must be proved guilty by such evidence beyond all reasonable doubt.

Defendant insists that in sentencing him, inasmuch as he was under execution of sentence in another institution, the court could not impose upon him another to begin at the termination of that which he was then serving. The law is to the contrary. In *Ex Parte Lamar*, 274 Fed. 160 at 176 the Circuit Court of Appeals for the Second Circuit expressly decided this [246] point, saying that the district court was not prohibited from fixing the

Respondent's Exhibit A—(Continued)

date of commencement of the term as the time when the prisoner finished a sentence he was then serving. The court commented that to hold otherwise would be to make a mockery of the law and stultify the course of justice. This decision was affirmed by the United States Supreme Court in 260 U. S. 711. Other courts holding that a sentence of imprisonment may properly commence upon the expiration of a preceding sentence are *Howard v. U. S.*, 75 F. 986; *U. S. v. Farrell*, Federal Case 15,074; 5 D. C. 311; *In re Jackson*, 10 D. C. 24.

I have reviewed the facts, examined carefully the record. Most of what defendant sets forth amounts at the most to an allegation of error in the action of the court at the trial. Such error may be taken advantage of only by appeal. That there was none would seem obvious from the fact that for twelve years, defendant prosecuted no appeal. Such error does not invalidate a judgment. The court has no power at this date to review or modify a sentence entered in 1930, because it is now alleged that error was committed at the time of the trial.

Consequently the motion is denied.

Entered this 3rd day of July, A. D. 1942.

(Signed) WALTER C. LINDLEY

Judge.

[Endorsed]: 11032. U. S. Cecil Wright. Memo of Findings and Conclusions upon Motion to Vacate Judgment. Filed Jul 3, 1942. D. H. Reed, Clerk.

(Respondent's Exhibit A—(Continued))

GOVERNMENT EXHIBIT No. 1

Case No. 140,499-D

STATEMENT OF ROBERT RAYMOND

State of Illinois,
County of Edgar—ss.

I, Robert Raymond, being first duly sworn, depose and state:

I am 25 years of age and my home is in Cleveland, Ohio. I am making this statement in connection with the burglary of the post office at Strasburg, Illinois, on the early morning of April 9, 1930, without any promise of reward, or threats being made, knowing that the same may be used against me.

On the evening of April 8, 1930, Monte Crist, Tuck Wright, Joe Hartman, Carl Sanders and I left Decatur, Illinois, in two automobiles. I was riding with Hartman in a four door sedan, while Crist, Wright and Sanders were in the two door sedan. Both machines were model "A" Fords. We drove around the country and sometime after midnight passed through Strasburg, Illinois, and drove on to Stewardson, Illinois. We drove out on the highway between Strasburg and Stewardson and discussed whether we would make Stewardson or Strasburg, but finally agreed to go to Strasburg. It was agreed that Hartman and I would drive into town and "Take" the night watchman, then signal to the other fellows to come in, which was done.

(Respondent's Exhibit A—(Continued))

We stuck up the nightwatchman and I signalled to the other fellows with a flash light. We searched the watchman and took from him his .25 caliber revolver, badge, keys and some money and then tied his hands behind him and put him in the four door sedan with Carl Sanders guarding him. His keys were not taken until he had been placed in the automobile. At the time, we thought some of the keys would fit the doors of the stores.

After we tied up the watchman, we drove both cars around the corner to the front of the merchandise store and four of us went over to the store and tried the keys on the two front doors, but the keys did not fit and we were unable to open the doors. I went back over to the four door sedan and got a crow bar that we had there and went to the side door of the store and forced it open. Wright, Crist, Hartman and I went into the store, Wright and Crist went to the rear, Hartman over to one side and I went up to the front part of the store. I overheard Wright make a remark about the safe being open and empty. Wright went up the street and was gone about 10 minutes, when he came back and asked for the crow bar. I gave the bar to him and asked him what he was going to do and he replied that he was going to go up the street and see what he could see. I did not see him again until just before we left town. When Wright left with the bar, we went outside the store and saw a truck that had just come into town. He pulled around the corner and Hartman and I jumped in our car

(Respondent's Exhibit A—(Continued))

and went after him. We found him asleep in his truck and stuck him up and took his money from him, as he had nothing else. We took him back to the four door sedan, tied his hands, and put him in the car with Sanders and the watchman. Hartman and I went back over to the merchandise store and saw a truck that had just pulled up in front of the tire store that is located in the rear of the merchandise store. We stuck him up and Hartman and Crist took him in the tire store where they tied his hands and his feet and sat him in the corner. [248]

I went out to the filling station and pumped the glass tank full of gas while Hartman went after the two door sedan, brought it over and filled it with gas and backed it up to the side door of the merchandise store. Crist stood guard in the tire store while this was being done and later went in the merchandise store to load up the car with the loot that had been chosen. Hartman went after the four door sedan and returned with Sanders and the two prisoners. They were taken in the tire store with the third captive and left there.

Just previous to the time that we left town and while we were in the tire store with the prisoners, Wright came back from up the street and I did not see what he had with him. Whatever he had he put in the two door sedan and he, Crist and Hartman got into it and pulled out. We went to Mattoon for breakfast and later went to Sky Line Springs where we stayed until noon. During the

(Respondent's Exhibit A—(Continued))

afternoon we drove back into Decatur and just before reaching town we stopped at the side of Route No. 121 and discussed what we were going to do. Tuck Wright said that he had another job in another small town near Decatur that would be similar to the one at Strasburg, but Crist and I disagreed with him on it. Sanders also disagreed with and later on Sanders told me that he was sore because Wright had entered the post office in Strasburg.

While at Strasburg, Illinois, four of us were armed with .45 caliber Colts automatic revolvers and one with a .38 caliber police special revolver. We also had two 12-gauge shotguns and three Springfield army rifles.

I did not see any of the musical instruments that were taken from Strasburg, Illinois, until we were arrested at Decatur. After our arrest, I saw a guitar hanging on the walls of the Sheriff's office and I was told it was taken from Rommel's house on the night the police made the raid at that place.

Wright has two brothers, a wife and two children living in Mattoon, Illinois, and one brother living in Charleston, Illinois. He is not divorced from his wife, but he does not live with her. Their home is somewhere between 9th and 16th street on Route No. 16 in the city of Mattoon.

(Signed) ROBERT "BOB" RAYMOND

Subscribed and sworn to before me at Paris, Illinois, on this the 14th day of May 1930.

(Signed) RONO KEEFE

Post Office Inspector.

(Respondent's Exhibit A—(Continued))

Witnesses:

(Signed) JEROME WILLIAMSON

(Signed) ROSCOE RIVES

(Signed) ROY JOHNSON

(Signed) R. E. RAGAINS

(Signed) CHARLES DANNY [249]

GOX EX 2

Case No. 140,499-D

STATEMENT OF JOSEPH G. HARTMAN

State of Illinois

County of Edgar—ss.

I, Joseph G. Hartman, being first duly sworn, deposes and state:

This statement is being made in connection with the burglary of the post office at Strasburg, Illinois, on the early morning of April 9, 1930, without any promise of reward, or threats being made against me, knowing that the same may be used in the prosecution of the case.

On the night of April 8, 1930, Carl Sanders, Monte Crist, Tuck Wright, Bob Raymond and I left Decatur, Illinois, in two automobiles. We drove around the country for some time, and I was riding in the four door sedan with Bob Raymond. Sanders, Crist and Wright were riding in the two door sedan. Both of these cars were model "A" Ford machines.

(Respondent's Exhibit A—(Continued))

Some time after midnight, we drove through the town of Strasburg, Illinois, and some one of the fellows suggested that we make that place. It was agreed and Raymond and I drove back into town where we stuck up the night watchman and then signalled with a flash light for the other fellows to come in. I held a gun on the watchman while Raymond searched him. We took his pocketbook, keys, badge and gun and tied his hands behind him. The other car came into town and all of the fellows got out of it. The watchman was taken to the rear of the building where he was searched and he was then placed in the rear of the four door sedan, with Sanders in the front seat to guard him. After we had entered one of the stores we went down the street and made captive of a bread truck driver, who was also searched and placed in the same car with the night watchman. After we had been in town for some time, a third man came in driving a truck and we tied him up in a garage and left him there. When we left town we, also, took the watchman and the driver of the bread truck to this garage and left them.

We got about \$12.00 in money from the robbery at Strasburg and about two baskets full of merchandise. I saw the neck of some kind of a musical instrument in the back end of the two door sedan, but do not know whether it was a guitar or mandolin.

Sometime late the afternoon of the 9th, we ar-

(Respondent's Exhibit A—(Continued)
rived at Decatur, Illinois, and I went to the railroad Y.M.C.A. where I had a room.

(Signed) JOSEPH G. HARTMAN

Subscribed and sworn to before me at Paris, Illinois, on this the 14th day of May, 1930.

(Signed) JEROME WILLIAMSON

Post Office Inspector.

Witnesses:

(Signed) ROSCOE RIVES

(Signed) ROY JOHNSON

(Signed) CHARLES DANNY

(Signed) RONO KEEFE [250]

GOX EX 3

Case No. 140,499-D

STATEMENT OF CARL SANDERS

State of Illinois

County of Edgar—ss.

I, Carl Sanders, being first duly sworn, deposes and state:

This statement is being made in connection with the burglary of the post office at Strasburg, Illinois, on the early morning of April 9, 1930, to aid in the investigation of that case, without any promise of reward, or any threats being made against me, knowing that the same may be used against me.

On the night of April 8, 1930, Monte Crist, Tuck

(Respondent's Exhibit A—(Continued))

Wright, Joe Hartman, Bob Raymond and I, left Decatur, Illinois, in two automobiles. I was riding in a two door Ford sedan with Crist and Wright. Raymond and Hartman were in a four door Ford Sedan. Both were model "A" machines. Sometime after midnight we drove through the town of Strasburg, Illinois, and some of the boys suggested that we make that place. Some one in the crowd said we would have to find the "Night clown," so it was agreed, and Raymond and Hartman drove back into town and circled around the block, found the night man and stuck him up. They then gave us the signal to come in. I was driving the car and we drove up along side of the four door sedan and everyone got out. Some of the fellows took the watchman to the side of a building and tied his hands. They then brought him to the car that Hartman and Raymond were in and placed him in the back seat, while I sat in the front seat, about two hours, during the time the other fellows broke in the stores and post office.

About an hour before we left town Tuck Wright came up to the car and asked the night watchman for the keys to the post office, bank and the stores. The watchman informed him that he did not have any of the keys to the buildings. Wright, at the time, asked the watchman if the .25 caliber automatic revolver belonged to him and he also asked him what he expected to protect with that gun. Wright further stated that he would bring the

(Respondent's Exhibit A—(Continued))

watchman a good gun when he came back to rob the bank. Wright also questioned the watchman as to whether there was a safe in the post office and wanted to know if there was any money in it, but the watchman was unable to inform him. Wright then went away and I did not see him again until after we had left town. When he made mention to the watchman about the post office, I advised him to stay away from it.

Leaving town, Wright, Monte Crist and Hartman were in the two door sedan, while Raymond and I were in the four door sedan, Raymond driving. None of the merchandise taken was placed in the car in which I was riding. We drove from Strasburg to Mattoon to the home of Wright's brothers where we had breakfast. We went from there to Decatur, arriving about noon, going to the home of Lionel Rommel. I noticed that among the loot taken out of the car in which Wright rode, there were 1 guitar, 1 clarinet, and some merchandise. Wright was wearing a gold ring, with a ruby set, bearing the initial "F". We asked him where the musical instruments and ring came from and he told us that he had taken them from the post office in Strasburg. [251]

I do not know if any of the other fellows broke in the Strasburg post office, but do know that they were "Sore" because Wright had gone into it. The fact that Wright entered the post office was one of the things that caused us to split up.

(Respondent's Exhibit A—(Continued))

All of the fellows that were at Strasburg were armed, Monte Crist had a .45 caliber Colt revolver, in fact all of the fellows had the same kind of a gun, except myself and I did not have any revolver. However, in the car in which I sat with the watchman, and a bread truck driver, who was brought to the car, for me to guard, there were 1 sawed-off shot gun and three army rifles laying at the feet of the prisoners. I do not know where the revolvers and rifles came from as the fellows had them when I joined them on April 1, 1930, at Casey, Illinois.

When Wright came up to the car to talk to the watchman about the post office, he wore a mask. I did not see any of the other fellows wearing a mask while at Strasburg.

(Signed) CARL SANDERS

Subscribed and sworn to before me at Paris, Illinois, on this the 14th day of May, 1930.

(Signed) RONO KEEFE

Post Office Inspector

Witnesses:

(Signed) JEROME WILLIAMSON

(Signed) ROSCOE RIVES

(Signed) ROY JOHNSON

(Signed) CHARLES DANNY [252]

(Respondent's Exhibit A—(Continued))

GOVT. EX. 4

STATEMENT OF CARL SANDERS

I, Carl Sanders, being now in the office of the State's Attorney of Macon County, Illinois, make the following statement of my own free will, no threats nor promises of any kind being made to me to get me to make this statement, and being informed by Victor C. Miller, State's Attorney of Clark County, Illinois, that any statement that I make may be used against me; this statement is being made in the presence of Victor C. Miller, Harry O. Coldren, Sheriff of Clark County, Illinois, F. A. Doolen, policeman and E. L. Doyle, Deputy Sheriff on this the 25th day of April, 1930.

My name is Carl Sanders and my home is Marblehead, Illinois, and my age is 34 years.

About a month ago Joe Hartman, "Shorty" Beasley and I were in Casey, Illinois and we saw two boys and one girl leave Casey about twelve o'clock at night. We knew that the boys and girls were from Greenup and had seen the boys and girl in a restaurant and they were talking pretty lively in the restaurant. The boys said that they were not going to take the girl home and she said "hell if they did not want to take me home I'll walk" and I think that Hartman or Beasley said "she did not have to walk that we would take her home." The other two boys said "we will take her home." They left and got in a car and we got into Hart-

(Respondent's Exhibit A—(Continued))

man's car and took out after them figuring that we would stop them and take the girl away from them and make the boys sore. We could not catch them after following them half way between Casey and Greenup. They turned into a barn lot and drove the car right into a barn and we stopped out along the road by a big tree and Hartman got out and went over to the barn and he came back *back* and said "Oh hell they only had two dollars on them. Hartman took a gun with him when he went over to the barn in fact he was the only one that had a gun. The gun was a .45 Colt automatic. Beasley and I stayed in the car while Hartman went into the barn and held the boys up.

About a week later Joe Hartman, Mark "Smiles" Bowles and I were in Casey one night, we planned to hold up "Sycamore" Hills and we figured out the way to do it before we started and decided that we would take him just as he got out of his car. We drove out on the pavement and parked about a block from his house about three o'clock in the morning; "Smiles" Bowles stayed in the car and Sycamore Hills drove by Bowles as he was parked. Previously Joe Hartman and I had gone to the barn and were waiting for Hills to drive into the garage. As he got out of the car I put a .45 Colts Automatic on him, told him to put his hands in the air which he did and Hartman went through his pockets. When he was told to put his hands up Hills said here is the change bag take it. He pulled

(Respondent's Exhibit A—(Continued))

the change bag out of his pocket and there was \$18.00. We got around \$80.00 from Hills and my share was \$16.65. Hartman was armed with a .45 Colts. After we held him up we drove back to town and I went back to the farm where I was working.

In a couple of weeks later about April 13th, 1930 on Sunday night Joe Hartman, Bob Raymond, Monte Crist and I were driving around out in the country starting to a stone quarry to get some Nitro Glycerin, fuses and caps, and before we got to the quarry we ran onto a car approaching us, Crist was driving the car, and Crist pulled across the road and stopped [253] the car, Crist, Bob Raymond and Joe Hartman got out of the car and I got under the wheel keeping the engine of our car running, and the other fellow put guns on a girl and a boy and they told them to get out of the car and they were searched at the point of the guns and got a diamond ring, wrist watch (man's wrist watch) and I don't know whether they got any money or not.

The same night about an hour and a half later we ran across another car approaching us and I was driving the car, I drove across-wise the road in front of the car and stopped it, Monte Crist, Joe Hartman, Bob Raymond got out of the car and went up to the car and made the two men get out and held them up and got a wrist watch and tied both of them up with wire and took them to a school house about a half mile away. Before we left the car we cut the spark plug wires so that they could

(Respondent's Exhibit A—(Continued)

not follow us. We took them to the school house so that they would not be out in the cold.

This Sunday night we had three Springfield rifles, two sawed off shot guns, two Colt .45 automatics, a 32, 38, 25 caliber revolvers in the car with us.

About in an hour or more we saw a car approaching west of Westfield in Clark County, Joe Hartman driving, and he drove across the road and compelled the car to stop and Joe Hartman, Monte Crist and Bob Raymond got out of the car and went up to the car and made him get out of the car and searched him and then took him to a school house just over the line in Coles County and stripped him of his clothes and left him and went back and took his car and drove it away with us, Bob Raymond driving the car away, this was a Ford Roadster Model A.

The next night, Monday night I think after we had driven to Decatur, Illinois and back, we broke in the back door of a Kroger Store in Casey and stole some cigarettes. I think about a carton and some cheese and crackers.

After we had held up the two boys and the girl west of Casey and Sycamore Hills a week or so later, Joe Hartman, Bob Raymond, Tuck Wright, Smiley Bowles came and got me at Smiley Bowles' home and told me that they were going to pull a big job at Mattoon, so I went with them in the Ford sedan that they were driving and went to a private garage and Bob Raymond and Monte Crist went in the garage and got a Reo Truck and we started

(Respondent's Exhibit A—(Continued)

to Mattoon and went as far as Westfield where the truck got on fire. We stopped and put out the fire and abandoned the truck on the street in Westfield leaving the truck right in the middle of the street.

On Thursday night about April 10th, 1930, Bob Raymond, Joe Hartman, Monte Crist, Tuck Wright and I drove two Ford sedans down to Strasburg, Illinois, and I stayed in the car and the other fellows brought the night policeman to the car where I was and left him with me and I talked to the policeman while the other boys were robbing a store. They got a car load of merchandise and loaded it into the other car and after that was done the policeman was tied up and left in the store that they had robbed.

A truck driver was tied up and put him in the same store with the policeman. He was all ready there when I saw him.

Smiley Bowles and Joe Hartman told me that Monte Crist, Bob Raymond, Tuck Wright, Smiley Bowles and Joe Hartman on the Hunk Finn holdup and that they got between \$100.00 and [254] \$170.00. They told me that they went in the back door and Bowles and Hartman stayed on the outside and watched and all of them were armed with guns.

(Signed) CARL SANDERS

Witnesses:

(Signed) VIRGIL BELCHER

(Signed) EDGAR L. DOYLE

(Signed) H. O. COLDREN

(Signed) L. E. STEPHENSON [255]

(Respondent's Exhibit A—(Continued))

GOVT. EX. 5

STATEMENT OF JOSEPH GLENN
HARTMAN

I, Joseph Glenn Hartman, being now in the office of the State's Attorney of Macon County, Illinois, make the following statement of my own free will, no threats nor promises of any kind being made to me to get me to make this statement, and being informed by Victor C. Miller, State's Attorney of Clark County, Illinois, that any statement that I may make may be used against me. This statement is being made in the presence of Victor C. Miller, State's Attorney of Clark County, Illinois, Harry O. Colgren, Sheriff of Clark County, Illinois, V. A. Belcher, Deputy sheriff and C. A. Thrift, sheriff of Macon County, Illinois, and L. E. Stephenson, Assistant State's Attorney of Macon County, Illinois, on this 25th day of April, 1930.

My name is Joseph Glenn Hartman and my age is 24 years and live at Casey, Illinois.

About six weeks ago on Saturday night about one o'clock in the morning, Monte Crist, Bob Raymond, Carl Sanders, Tuck Wright and I met at Sycamore Hills' Skating rink, and got to talking and needing some money decided to rob Huck Finn who is a clothing store man in Casey; Tuck Wright, Bob Raymond and I got in a Pontiac Coupe and the two others got in Ford Coupe and drove down to the highway and parked the car right at the side of the

(Respondent's Exhibit A—(Continued)

store. Tuck Wright, Bob Raymond and Monte Crist went to the back door of the store and before they got to the back door a fellow by the name of Markwell came out of the back door so they made Markwell go back into the store. Tuck Wright, Bob Raymond and Monte Crist went into the store and held Huck Finn up. One of the fellows in the inside of the store threw a gun *threw* the front door. Boy Raymond went on the outside of the store and got the gun and General Bragg was standing across the street so Bob Raymond went and got Bragg and made him go into the Store. They got \$111.17 and on the split I got somewhere around \$22.00 out of the holdup. We drove out of Casey to the Oak Grove School where the split was made. During the time they were holding up the store I stayed in the car watching to give the alarm if anyone came up.

The next Saturday night Carl Sanders, Ralph Beasley and I went out west of Casey in my Ford Coupe following two boys and a girl that we had seen in the White Way Cafe. We had been going to Greenup to dances and had seen the girl there before and we followed them and saw them turn into a barn and I parked out in the road and I got out and went into the barn, with my hat pulled down over my face told them to crawl out of the car and stand in the light of the car. I had a 45 Colt automatic with me and I told them to lay their pocket books and money on the fender and I

(Respondent's Exhibit A—(Continued)

searched one of the fellows and I got \$3.95 and went back to the car and went on into Casey. During the time that I held up the two boys and the girl, Sanders and Beasley stayed in the car.

Carl Sanders, Smiley Mark Bowles and I met at Sycamore Hills' place of business and about when he got ready to go home we planned to hold him up, so we left before he left and went over to Hills' Garage and waited for Hills to come, parking the car on the pavement about two blocks away. When Hills came in Sanders put a gun on him and took between \$75.00 and \$80.00 off of him. I took the money off of Hills. Smiley [256] Bowles stayed at the car. Sanders and I were masked. This was the next Sunday night I think after we had held up the two boys and girl. We three split the money and I got twenty-eight dollars.

The next job we pulled was at Strasburg, Illinois, when Monte Crist, Bob Raymond, Tuck Wright, Carl Sanders and I had been to Terre Haute, Indiana and had got some beer to drink, we went back to Casey and while riding around we decided to go to Strasburg and hold up the general store for money and we drove on over to Strasburg and one car went into town and the other car stayed out of town. Bob Raymond and either Tuck Wright or Monte Crist went in and tied the town marshal and flashed a light and we drove on into town with the other car and Crist and Raymond went to the general store and pried the back door open and

(Respondent's Exhibit A—(Continued))

Crist, Raymond and I went inside and Sanders stayed in the car with the night watchman and I don't know where Wright went but I think he went to night watchman's office and then there was a bread truck came in Raymond and I went down and tied him up and put him in the car with the night watchman. We went back down to the store and another truck came up and Raymond and Crist tied him up and took him to a garage and then put the night watchman and the other fellow in with him. When I got the second truckman tied up I went outside and they were in the cars ready to go. We got around \$12.00 in the general store. Tuck Wright told the night watchman that they would return and give him a good gun. I do not know how much merchandise we got out of the store but I did not take any of it. We drove to Sky Line Springs that night and stayed there in the afternoon then came to Decatur.

We laid around in Decatur until Sunday night and we then went back down to Casey and laid over about four miles east of Casey all day sleeping in a barn and went to Martinsville for supper and went over southeast of Casey and held up a girl and her fellow. The girl was Juanita Cackley and I knew her. We drove up beside them and ordered them to get out of the car and three of us got out all with guns. Sanders or Crist went over to the car and I stood back of the car and they got about \$7.00 off of him, a diamond ring, and they took the

(Respondent's Exhibit A—(Continued))

distributor brush off of his car so he could not follow us.

We then went a mile south of Casey and held up Ernest Blood and Vaughn Arney. As we met them we pulled in front of them and turned them around Christ and Raymond rode with them going two miles west and one half north to a school house and tied them up and gagged them got a pocket watch and a wrist watch and I don't know whether any money was gotten off of them or not. We were armed with guns. On this night we had a lot of guns in the car consisting of Springfield rifles, 45, 38, 32, 25 automatics and revolvers.

We went north of Oak Grove Log Cabins and started east on the Westfield road and over took a fellow driving a Ford Roadster, who was a school teacher by the name of Horner Raymond and I got out after we had stopped him and took twelve dollars from him and took him in our Ford sedan and turned around and went back west to a school house and took him in and tied him up took his clothes, consisting of a suit and top coat and left him in his underwear. We got wrist watch off of him. We were armed with Colt 45 automatics. [257]

We went back east and to a mile north of Westfield driving the Ford roadster that we had taken from Horner and flagged a guy but he would not stop and he passed us in the Ford sedan and the Ford roadster turned on the lights and the fellow pulled up beside the road Raymond, Crist and I

(Respondent's Exhibit A—(Continued))

got out searched him for guns and his money and then took him north about two miles and east a mile and took him to a school house and tied him up and Monte Crist took one fellows suit and we got ten dollars off of the two fellows. We were armed when he held him up.

We went east and north through Kansas and went to Paris and went up through Danville and I got in the Ford sedan and went to sleep in the back of the car and when I woke up they had parked the Ford Roadster along the road and we laid around in that country Monday and Tuesday and Tuesday night coming down from Watseka we went west from Watseka seventeen miles and turned north at Gilman and overtook four fellows and we took them back to a school house and got ten or eleven dollars from them, a fountain pen, pencils a wrist watch and pocket watch, and come on south went into the edge of Bloomington and eat breakfast and come on into Decatur getting there about ten o'clock and stayed at the Lincoln Hotel and went out to Charleys Wilson's that night where we stayed until arrested.

(Signed) JOSEPH GLENN HARTMAN

Witnesses.

(Signed) C. A. THRIFT

(Signed) VIRGIL BELCHER

(Signed) H. O. COLGREN [258]

(Respondent's Exhibit A—(Continued))

GOVT EX 6

STATEMENT OF ROBERT RAYMOND.

I, Robert Raymond, being now in the office of the State's Attorney of Macon County, Illinois make the following statement of my own free will, no threats nor promises of any kind being made to me and being informed by L. E. Stephenson, Assistant State's Attorney of Macon County, Illinois that any statement that I may make may be used against me; this statement is being made in the presence of C. A. Thrift, V. A. Belcher, Victor C. Miller and Harry O. Coldren on this the 25th day of April 1930.

My name is Robert Raymond and I am 25 years of age and my home is Cleveland, Ohio.

About six weeks ago Monte Crist, Slim Wright, Smiles Bowles, Joe Hartman, Carl Sanders and I met in Casey, Illinois and decided to rob Huck Finns' store so we drove beside the store and parked them and Joe Hartman and one of the other boys stayed in the two cars and the rest of us got out and went to the back door and we caught a fellow that had just come out of the store and we took him back with us and made him knock on the door and call to Huck to open the door. Huck came to the door and opened it rushed in and three fellows were sitting at a table and we lined all of the men up besides the rack and we went through them and got three or four dollars off the table and

a couple of dollars in change in the safe and got the rest off the men we had lined up, the biggest part of it coming off of Huck Finn. The four of us who went in were armed with 45 Colt automatic and two of us were masked. Monte Crist and Smiles Bowles were the two that was masked. A fellow came around snooping and one of the fellows threw a gun *threw* the front door and went out and got the fellow snooping around getting him across the street. He was brought in and lined up with the rest and then all were tied with neck ties. The fellow was called General Bragg or general nuisance or something. After we got them all tied up we all left.

Joe Hartman, Carl Sanders, Monte Crist and I stopped on the road on our way into Casey, and planned to rob Sycamore Hills and went down to his place of business and watched it and about when he was ready to close up his business we left and went down to his garage and Carl Sanders and I planted ourselves in the garage and Hartman and Crist stayed in the car and when he came in and got out of his car we put our guns on him and tied him up. When Sanders put his gun on him ^{he} ~~he~~ threw the money bag in the corner. We got the money bag and left. We got around \$75.00 on this job.

Carl Sanders, Joe Hartman, Slim Wright, Monte Crist and I went down to Strasburg, Illinois and drove through and went on to Stewardson and then came back and parked one car about a quarter of a

mile north of town and Joe Hartman and I went back to the town in one of the cars and found the night marshal on the corner and I drove up in front of him and put a gun on him and tied him up and put in the back of the car and got a little money off of him. I signalled to the other car to come on in with a flash light and they came in. We parked the cars on the main street opposite the main [259] store of the town and went in the store from the side entrance and some of the boys got some cigarettes, candy, a couple of pairs of shoes, a grip and I do not know what all and about that time a truck driver rolled in so I went after him and he turned around the corner and I thought he went on out of town but Joe Hartman and I found him in his truck asleep. We put a gun on him and tied him up and took him to the car and put him in the car with the town marshal. *We some* money off of him, I do not know how much. Another fellow in a truck pulled up to a tire store back of the *gneral* store and Monte Crist, Joe Hartman and I went and put our guns on him and tied him up and took him into the tire store and then got the town marshal and the other truck driver and put them all three in the tire store. We got some money off of the second truck driver also a 32 Harrison & Richardson revolver. We then all got into the two cars and left town and went around by Charleston and then went to Decatur.

On Sunday night, April 13th 1930 Monte Crist, Joe Hartman, Carl Sanders and I went from Deca-

(Respondent's Exhibit A—(Continued))

tur, Illinois to Casey getting there about eight thirty and drove out east of Casey on a gravel road about a mile and one-half east of the hard or farther I guess and saw a car coming up behind us and we pulled cross-wise of the road and stopped the car and Hartman, Crist and I got out and put our guns on a boy and a girl who was in the car and made them get out and we got some money off of the boy and a wrist watch I think off of him and a diamond ring off of the girl, tied his hands together and I took the distributor brush off and we drove on south and then swung west and crossed the hard road about a mile and come across two men in a Ford touring car stopped them and turned them around and took them to a school house and took them inside and tied them up and took what they had, consisting of a couple of watches and some money that was dropped in the car and some money off of them. I do not know how much money we got. One of the fellows was a fat fellow and the other was slim. We left the car behind the school house and left the fellows in the school house tied up and drove on towards Charleston and about a mile from the Charleston hard road we came across a Ford roadster headed towards Westfield and we went after him and stopped him west of Westfield. We pulled in ahead of him and ordered him to stop and I ordered him to get out of his car and to get into our car and we took him back to a church a mile from the Charleston hard road,

(Respondent's Exhibit A—(Continued))

stripped him tied him up and left him in the church. We took his car with us and drove his car away. We got a wrist watch off of him and some money.

We then went west of Westfield and headed for Kansas and we met a Whippet Coupe with two fellows in it and we swung across the road ahead of them and stopped them and I got in the car with them and made them turn around and took them to a school house just south of Kansas a little ways. I put a gun on them and made them drive the car to the school house. We took them into the school house and stripped the little fellow, tied both of them up got a watch or two, a ring or two and some money off of them and left the car in back of the school house.

We headed up towards Danville, Illinois and dropped the car and went up through Valpariaso, Indiana and then back through Watseka and Gilman and just out of Gilman, north we drove along side of a car with four fellows in it, this was [260] a Pontiac sedan. We turned them around and took them back north and east of Gilman to some little town and tied them up in a school house. Joe Hartman and I got into the car with the four fellows putting them in the back seat and Joe and I got in the front seat and drove the car. We got a ring, a watch or two and some money off of them. We left them in the school house and brought the car back to Gilman and left it there and came to Decatur.

(Respondent's Exhibit A—(Continued))

Slim Wright, Joe Hartman, Carl Sanders, Smiles Bowles and I along with Monte Crist planned to do a job in Mattoon and wanted a truck and I was told where the truck was and they took me to where the truck was and I went and got it out of a garage or barn and we drove up the hard road to Westfield and when we got to Westfield the truck got on fire and we abandoned the truck in the middle of the street.

Monte Crist, Carl Sanders, Joe Hartman and I went to Charleston and Joe and I went in the depot of the Big Four and there was two fellows sleeping on the floor and one fellow sweeping up in the ticket office and I put a gun on the fellow that was sweeping and Joe Hartman put a gun on the two fellows on the floor and I made my man open up the safe and the cash drawer and got \$100.00 out of the safe and a 25 off of the window and a 32 off of the expressman and tied all of them up and put them in the back room and we left and came back to Decatur, Monte Crist and Carl Sander stayed in the car while Joe and I pulled the job.

(Signed) ROBERT RAYMOND

Witnesses.

(Signed) C. A. THRIFT

(Signed) VIRGIL BELCHER

(Signed) H. O. COLDREN

(Signed) L. E. STEPHENSON [261]

(Respondent's Exhibit A—(Continued))

June 2, 1930

GOVT. EX 7

STATEMENT OF CECIL WRIGHT

I, Cecil Wright, being first informed by Special Agents A. M. Gladsteen and M. P. Scanlow of the U. S. Department of Justice of my constitutional right do hereby make the following statement voluntarily, free from duress and without threat or promises of immunity.

I am 24 years of age and was born at Charleston, Ill.

I first met Mark Bowles at Casey, Ill about March 1, 1930. At that time I was with Monte Chris's gang.

I was released from Pontiac Ill. Reformatory on April 28, 1927 on Parole. I was paroled to Pat Nacy of Mattoon Ill. Later I was changed over to a Mr. Phillips of the Browns Shoe Factory, Mattoon, Ill. In the summer of 1928 I came to East Chicago, Indiana where I lived with my mother

C. W.

Mrs. Dora Wright. I worked around East Chicago, Ind. until about the first part of March 1930, when Monte Criss Bob Raymond and Ed Murray came to me and told me that I had violated my Illinois Parole and that I was wanted there. Criss promised me \$2000.00 in cash if I would go back to Mattoon, Ill and join his gang—Criss gave me \$100. cash and promised to give me the rest later on. I never did get the \$1900—except about \$300 later on.

(Respondent's Exhibit A—(Continued))

Enroute to Mattoon, Ill from East Chicago, Ind Criss told me about robbing the Humboldt Ill bank and that he and Bob Raymond had pulled a robbery at the Sullivan, Ill Armory—I saw the guns they got from the Armory job. There were 3 Rifles 10 Automatic Pistols—2 or 3 thousand

C. W.

rounds of rifle ammunition and 2 pair of field glasses and several gun cleaning outfits. Criss gave me a 45 Colt [262] Automatic Pistol #304323 which was taken in the Sullivan, Ill. Armory job. Later on he gave one of the guns to Bowles. The *serial* number was filed off.

I was with the Criss gang about a month and a half. I accidentally shot myself in the left hand and while I was waiting for the hand to heal, Criss gave me a Ford Sedan to drive to East Chicago, Ind. The Ford is a stolen car and was stolen by Criss. I don't know where the car was stolen from. I called for Mark Bowles whom I knew as "Smiles" and requested him to accompany

C. W.

me to East Chicago, Ind. where we *planed* on finding work. We arrived in East Chicago, Ind the first part of May 1930. I attempted to find work but was not *sucesful*. On May 24, 1930 Bowles and I drove to SoBend, Ind. We stayed there all day May 24, 1930—Bowles stayed there and I drove to Mattoon, Ill to see my wife.

I returned to East Chicago, Ind and found

(Respondent's Exhibit A—(Continued))

Bowles at my Mothers place—He and I then drove to South Bend Ind in order to redeem a gun he had put up as security. I paid the \$3.00 loan off to a fellow named Joe, who works for a fellow who runs a still at 1232—No Bendix Drive.

We left East Chicago, Ind about 12 midnite Tuesday May 27, 1930

C. W.

and arrived in South Bend about 2 A. M. May 27, 1930—We went directly to Rose's place 1224 No Bendix Drive. Rose's place was locked up. While at Rose's place 3 men drove up in a new Ford Coupe—We, Bowles and I, thought they were police so we beat it and drove out in the country and waited until day light when we went into SoBend and saw Rose. It was at this time that I paid off the loan on Marks gun to Joe. I do not know Joe's last name. [263]

I know nothing whatever about the South Bend, Ind Armory Job.

Both Bowles and I knew that Criss had stolen the Ford Sedan.

(Signed) CECIL WRIGHT

Witness

(Signed) A. M. GLADSTEIN,

Special Agent, U. S. Department of Justice

(Signed) M. P. SCANLON,

Special Agent, U. S. Dept. of Justice [264]

(Respondent's Exhibit A—(Continued))

District Court of the United States of America
Eastern District of Illinois

I, D. H. Reed, Clerk of the District Court of the United States for the Eastern District of Illinois, and keeper of the records and seals thereof, do hereby certify the foregoing to be true copies of:

Docket Entries,

Indictment,

Plea of Not Guilty,

Verdict of Jury,

Proceedings of Jury Trial, Sentence, and Return of Marshal,

Motion for Continuance,

Memorandum of Findings and Conclusions Upon Motion to Vacate Judgment, and Government Exhibits numbered from 1 to 7, inclusive, in the Matter of United States of America -vs- Robert Raymond, et al., Criminal No. 11032, as fully as the same appear from the originals now on file and of record in my office as Clerk of said Court.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at my office in the City of East St. Louis, in the District aforesaid, this 6th day of July, A. D. 1942.

D. H. REED,

[Seal]

Clerk. [265]

CERTIFICATE OF CLERK, UNITED STATES
DISTRICT COURT TO TRANSCRIPT OF
RECORD.

I, Walter B. Maling, Clerk of the District Court of the United States, in and for the Northern District of California, do hereby certify the foregoing 288 pages, numbered from 1 to 288 inclusive, to be a full, true and correct copy of the record and proceedings as enumerated in the designation of contents of record on appeal in the cause entitled Cecil Wright, vs. James A. Johnston, on Habeas Corpus, No. 23744, as the same remain on file and of record in the office of the Clerk of said Court, and that the same constitutes the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the cost of the foregoing transcript of record is \$66.20; that the said amount has been charged against the United States.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 22nd day of December, A. D. 1942.

[Seal]

WALTER B. MALING,
Clerk.

By W. E. VAN BUREN,
Deputy Clerk. [287]

[Endorsed]: No. 10331. United States Circuit Court of Appeals for the Ninth Circuit. James A. Johnston, Warden, United States Penitentiary, Alcatraz, California, Appellant, vs. Cecil Wright, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed December 22, 1942.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
For the Ninth Circuit

No. 10331

JAMES A. JOHNSTON, Warden, United States
Penitentiary, Alcatraz, California,
Appellant,

vs.

CECIL WRIGHT,

Appellee.

AMENDED STATEMENT OF POINTS TO BE
RELIED ON IN APPEAL AND DESIGNATION OF CONTENTS OF RECORD TO BE PRINTED.

James A. Johnston, Warden of the United States Penitentiary, Alcatraz, California, appellant herein,

hereby designates the entire record filed with this Court, save and excepting pages 266 to 286 inclusive, which are the transcripts of testimony of June 27, 1942, and May 29, 1942, filed November 16, 1942, before the District Court of the United States for the Northern District of California in case number 23647, as necessary for the consideration of the appeal, and the following constitute the points to be relied upon by him on appeal:

(1) That the Honorable William Denman, United States Circuit Judge for the Ninth Circuit, should have denied the petition for writ of habeas corpus filed by appellee before him.

(2) That the Honorable William Denman, United States Circuit Judge for the Ninth Circuit erred when he ordered the appellee discharged from the custody of appellant.

(3) That the sentences imposed against appellee by the United States District Court for the Eastern District of Illinois are valid existing judgments presently in full force and effect and justifiable cause for the present continued detention of appellee by appellant.

Respectfully submitted,

FRANK J. HENNESSY,

United States Attorney,

A. J. ZIRPOLI;

Assistant United States At-
torney,

Attorneys for Appellant.

Dated: January 12, 1942.

United States
Circuit Court of Appeals
For the Ninth Circuit.

JAMES A. JOHNSTON, Warden, United States
Penitentiary, Alcatraz, California,

Appellant,

vs.

CECIL WRIGHT,

Appellee.

SUPPLEMENTAL
Transcript of Record

Upon Appeal from the District Court of the United States
for the Northern District of California,
Southern Division

NAMES AND ADDRESSES OF ATTORNEYS

MR. CECIL WRIGHT,

No. 579, Alcatraz, California.

In Propria Personna.

MR. FRANK J. HENNESSY,

United States Attorney,

Northern District of California.

MR. A. J. ZIRPOLI,

Assistant United States Attorney,

Northern District of California.

Post Office Building,

San Francisco, California.

Attorneys for Appellant.

At a stated term, to wit: The October Term 1942, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Tuesday the nineteenth day of January in the year of our Lord one thousand nine hundred and forty-three.

Present:

Honorable Francis A. Garrecht, Circuit Judge,
Presiding.

Honorable Clifton Mathews, Circuit Judge.

Honorable Albert Lee Stephens, Circuit Judge.

No. 10331

JAMES A. JOHNSTON, Warden, United States
Penitentiary, Alcatraz, California,
Appellant,

vs.

CECIL WRIGHT,

Appellee.

ORDER GRANTING MOTION TO INCLUDE
ADDITIONAL DOCUMENTS IN TRAN-
SCRIPT OF RECORD, AND DENYING
MOTION TO DISMISS

Upon consideration of the motion of appellee that additional documents be made a part of the certified transcript of record herein and counsel for appellant stipulating for inclusion of two prior petitions for writ of habeas corpus, being Nos.

23,581-S and 23,611-S in the District Court of the United States for the Northern District of California, Southern Division, as a part of the certified transcript of record, and good cause therefor appearing, It Is Ordered that such motion be, and hereby is granted as to such prior petitions for writs of habeas corpus, and the clerk of said District Court is hereby directed to transmit to this Court a certified copy of each of such petitions.

Upon consideration of the motion of appellee for dismissal of the appeal herein, and of the memorandum of appellant in opposition thereto, and good cause therefor appearing, It Is Ordered that such motion to dismiss be, and hereby is denied.

EXHIBIT B

In the District Court of the United States of
America Within and for the Northern District
of California, Southern Division, San Francisco

No. 23581-S

PAUPERS OATH

County of San Francisco,
State of California—Affidavit.

To Whom It May Concern:

The undersigned party, Cecil Wright, herein after referred to as the party of the first part, disposes and says he was fined in the sum of Ten Thousand Dollars, to be paid to the United States of America, said fine aforesaid having been imposed by the Honorable Judge Walter C. Lindley of the United States District Court, Eastern Division of Illinois, Danville.

That the party of the first part deposes and says that he has fulfilled the necessary requirements by serving a number of days totaling thirty in the United States Penitentiary, Alcatraz Island, California, under the supervision of James A. Johnston, Warden of the aforesaid penitentiary.

The party, Cecil Wright, party of the first part deposes and says that James A. Johnston, Warden of the United States Penitentiary, Alcatraz Island, California, to be referred to as the party of the second part. That the party of the first part is in the custody of the party of the second part and party of the first part is to pay a fine of ten thou-

sand dollars to the party of the second part, before the party of the first part is subject to discharge from prison on a judgment, No. 11032. The party of the first part deposes and says that he has satisfied the judgment No. 11032, by serving the sentence and a number of days totaling thirty over the date required on the sentence imposed in judgment No. 11032, and said service of sentence and number of days totaling thirty was completed under the custody of the party of the second part.

The party of the first part now deposes and says he is a pauper and was unable to pay the sum of ten thousand dollars to the party of the second part or furnish security therefore, and party of the first part has no assets to list herein.

That the party of the first part is now eligible for discharge from the custody of the party of the second part, on the outcome of a hearing for a [1*] Writ of Habeas Corpus to issue out of the District Court of the United States of America, Northern District, Southern Division, San Francisco, California; where the party of the first part is seeking his release from the custody of the party of the second part by Habeas Corpus.

(Signed) CECIL WRIGHT

Affiant and party of the first
part.

Cecil Wright, Register Number 579 AZ has on deposit in the Prisoners' Trust Fund, the sum of \$82.38.

*Page numbering appearing at foot of page of original certified Transcript of Record.

Subscribed and sworn to before me a Notary Public this 22 day of September A. D. 1941.

Notary Public

E. S. MILLER

Associate Warden, U. S. P.,
Alcatraz Island, Calif.

Warden-Associate Warden authorized by the Act of February 11, 1938, to administer oaths.

Filed in the District Court, A. D. 1941. [2]

In the District Court of the United States of
America Within and for the Northern District
of California, Southern Division, San Francisco

Civil Action H. C. No.

CECIL WRIGHT,

Petitioner,

vs.

JAMES A. JOHNSTON, Warden U. S. Peniten-
tiary, Alcatraz, California,

Respondent.

PETITION FOR A WRIT OF HABEAS
CORPUS

To:

The Honorable Martin I. Welch, United States
District Court, Southern Division, San Francisco,
California, at Chambers.

Now comes Cecil Wright, hereinafter referred to

as the petitioner, appearing in proper person and said petitioner waives the rights to counsel.

“Power of Judges to issue Writs of Habeas Corpus.”

Your petitioner hereby respectfully submits the following statutes empowering your Honor to hear and consider this petition in Chambers, to wit:

“The several judges and justices of the said courts—within their respective jurisdiction, shall have power to grant Writs of Habeas Corpus, for the purpose of an inquiry into the cause of restraint of liberty.”

(Compiled statutes of the United States, Sec. 1280)

(Revised statutes of the United States, Sec. 752)

(Act March 2nd. 1833, C. 57, Sec. 7, 4, Stat. 634)

(Act September 24th, 1789, C. 20 Sec. 14, 1 Stat. 81)

(Act April 10th. 1869, C. 22, Sec. 2, 16 Stat. 44)

(Act Feb. 5th. 1867, C. 28, Sec. 1, 14, Stat. 385)

(Act Aug. 9th. 1842, C. 257, Sec. 1, 5, Stat. 539)

“The power to issue the Writ may be exercised at Chambers” (Bennett vs. Bennett, D. C. Federal Cases, No. 1318).

1. The petitioner avers and alleges that he was indicted in the United States District Court, East-

ern Division of Illinois, Danville, hereinafter referred to as the Trial court at the May 1930 A. D., term of court thereof setting under Criminal Cause No. 11,032 and 11,074.

2. The petitioner avers and alleges that he was found guilty by a jury in criminal cause No. 11,032 and sentenced to a term of ten years and fined in the sum of ten thousand dollars. The petitioner alleges that in cause No. 11,032, he was convicted and sentenced on September 17, 1930, and said trial court did not defer or suspend the pronouncement of judgment and sentence. That said [3] judgment and sentence was passed on September 17, 1930, entered into the records and minutes of the court. That a warrant to convey dated September 17, 1930, issued under the hand and seal of the trial court attached to the aforesaid judgment and commitment, directing the said Marshal of the aforesaid district to deliver your petitioner herewith to the Warden or his keeper of the United States Penitentiary, Leavenworth, Kansas, to be confined therein for service of sentence imposed under cause No. 11,032—said sentences to run consecutively and to pay a fine in the sum of ten thousand dollars, that execution issue therefore and that the said petitioner stand committed to the said Penitentiary, until said fine shall have been fully paid.

3. The petitioner avers and alleges that a specification offset from the judgment in quotation marks states: "It is further ordered by the Court that the sentences herein imposed shall begin upon

the expiration of the sentences which the said defendants are now serving in the Southern Illinois Penitentiary". The petitioner alleges that this aforesaid specification was not passed upon the petitioner in open court. That the specification was entered after the petitioner was taken from the Court, and if such a specification had of been an instruction by the court upon pronouncement of sentence the aforesaid specification would appear in the judgment and would not appear as a footnote added to the judgment. The petitioner further alleges that in cause No. 11032, the court did not raise the question as to the said—petitioners past record. The question of the petitioners' past record was not raised due to the fact that the petitioner did not take the witness stand to testify in his own behalf.

4. The petitioner avers and alleges that he was serving a sentence in the Southern Illinois Penitentiary prior to the conviction of September 17, 1930. That the sentence in the Southern Illinois Penitentiary, was an indeterminate sentence of not less than one year and no more than natural life, having been imposed on July 26, 1930, fifty two days prior to the conviction and sentencing in criminal cause No. 11032. The petitioner alleges that the sentence in the State Penitentiary did not have a definite release date, and therefore it would be to uncertain as to the beginning of the sentence imposed by the Federal Court in Criminal Cause No. 11032. That there is no date set for the beginning of the Federal sentence, otherwise than the date

of September 17, 1930. That the judgment and commitment is silent as to the commencement of the sentence on October 31, 1939, and there- [4] fore the petitioner alleges that the sentences should of started to run from the day of judgment and to be otherwise, would be dominating the petitioner's future life. That to start a sentence at some future date unknown to the court is to indefinite, and the petitioner further alleges the court could not post date the sentence after the sentence had began to run. That even the aforesaid specification mentioned as a footnote is without a meaning and does not hold any weight of authority as to the commencement of the sentences imposed under criminal cause No. 11032. That the petitioner in citing the case of *Eyler v. Aderhold*—CC.A. 5th. Cir. No. 7182: Alleges that this case although affirmed and not in direct conflict with the petitioner's case, it has within opinions that controlls the petitioner's case in respect to the commencement of the sentence, it follows: (2-5) It has been the rule, in the absence of statute that if the commitment is silent as to the date the sentence shall begin to run, it will commence with the date of delivery to the designated jail. Prior to the adoption of the Act of June 29, 1932, it was quite usual in sentencing a convicted person to impose the statutory penalty and give credit for such time as he had been confined in jail awaiting trial. This sometimes led to an arbitrary construction of the commitment by the jailer, which tended to deprive the prisoner of the

credit intended to be given by the court. It also frequently happened that after sentence the prisoner would be detained in a local jail awaiting transportation to the penal institution in which he was to be confined for service of the sentence. Credit on the term could not be given for this imprisonment unless the commitment so provided. It is to be assumed that Congress intended to prevent situations such as these that might be detrimental to the rights of the prisoner as well as to make certain the date when a sentence legally began, something very necessary for the reasonable and proper application of the parole laws. Of course, a judge may take into consideration the time a person has remained in jail awaiting trial in imposing the sentence and if, through an unavoidable delay or the carelessness of the marshal, his delivery to a penitentiary or other penal institution is postponed, his rights will not suffer."

5. The petitioner avers and alleges that in criminal cause No. 11032, three sentences were imposed totaling ten years and a fine of ten thousand dollars. That a certified copy of the indictment, judgment commitment and warrant to [5] convey in Cause No. 11032, is attached hereto made a part hereof and marked as "Exhibits A".

6. The petitioner avers and alleges that in criminal cause No. 11,074, he entered a plea of guilty and was sentenced to a term of five years on the date of September 17, 1930. That the judgment is as follows:

“Be imprisonment in the United States Penitentiary at Leavenworth, Kansas, for the period of five years, said sentence to run and be served consecutively with the sentence imposed against the said defendant in case No. 11,032, and that said defendant be committed to said Penitentiary pursuant to said sentence.” The petitioner alleges that the sentence of five years in case No. 11074, and the sentences totaling ten years in case No. 11,032, are aggregated totaling fifteen years. The petitioner alleges that the total sentence of fifteen years expired on October 12, 1940. That the said fine of ten thousand dollars has been fully paid, having served sufficient time over the discharge date as required by law under the pauper’s oath, and that a pauper’s oath is attached hereto made a part hereof and marked as, “Exhibit B”. That a certified copy of the indictment, judgment, commitment, and warrant to convey is attached hereto made a part hereof and marked as “Exhibits C”.

7. The petitioner avers and alleges that the only sentence known to the law is the sentence or judgment entered upon the records of the Court.

Miller v. Aderhold, *supra*; *Manke v. People*, *supra*. If the entry is inaccurate, there is a remedy by motion to correct it to the end that it may speak the truth. *People ex rel. Trainor V. Baker*, 89 N. Y. 460, 466. But the judgment imparts verity when collaterally assailed. *Ibid*. Until corrected in a direct proceeding, it says what it was meant to say, and this by an irrebuttable presumption. In

any collateral inquiry, a court will close its ears to a suggestion that the sentence entered in the minutes is something other than the authentic expression of the sentence of the judge. The petitioner alleges that the records and minutes in criminal cause No. 11,032, will clearly show the specification entered into the judgment was entered after the departing of the said petitioner from the court. That such an entry by the clerk of the court should be considered as no weight of authority and should be held void insofar as the specification is concerned. That under (18 U.S.C.A.—569, 641) Provisions [6] in commitment for imprisonment for non payment of fine and costs which was inserted by clerk but not included in sentence pronounced by judge held void; as in the case of *Hill, Warden v. United States ex rel. Wampler*, No. 847; as ruled in an opinion by Mr. Justice Cardoza, on questions No. 1, Fines 6, 12 (U.S.C.A.—569, 641) and No. 9, Criminal Law—999 (1) (18 U.S.C.A.—569, 641). That under this aforesaid cited case a clerk of the court is without authority to add a specification to the judgment, regardless whether the provisions mentioned are for payment of fine or for other penal instructions.

8. The petitioner avers and alleges that his term of imprisonment has expired in full and he is subject to discharge by Habeas Corpus in case No. 11032 and 11,074. That a petition styled in the form of a subpoena for letters and records in support of the allegations set forth in this said complaint, is—

attached hereto made a part hereof and marked as, "Exhibits F".

9. The petitioner avers and alleges that in citing *Collins v. State* (2 Div. 352) The foregoing opinion is cited with approval in *State v. Brennan*, 83 N.J. Law, 12, 84 A. 1066. Su, also, *Crain v. U.S.*, 162 U.S. 625, 16 S.Ct. 952, 40 L. Ed. 10 97. The clerk has no power to enter, and it is error for the court to permit a judgment to stand declaring that a defendant has been convicted of one offense, when in fact the conviction was for another and separate offense. This is more than a technical error. A judgment is a solemn record, which should speak the truth, and is ordinarily conclusive evidence of the fact recited in it, and such evidence ought not to be permitted to stand when, on direct appeal, it appears that the recitals are not true. *People v. Eppinger*, 114 Cal. 350, 46 P. 97. The trial court was in error in refusing to set aside the judgment.

If there had been a plea of guilty as to the second count, the judgment would not be reversed on account of a failure of proof. The judgment is reversed, and the cause is remanded. That the aforesaid opinion is in direct conflict with the petitioner's case No. 11032, in reference to the specification entered by the clerk of the court after final judgment was passed and sentences had begun to run.

10. The petitioner avers and alleges that he presents a certified copy of an indictment, commitment, judgment and warrant to convey No. 11,073, issued out of the said trial court on the seventeenth

day of September 1930 A.D. That the parties, Carl Sanders, Robert Raymond and Joe Hartman named in the aforesaid indictment, commitment and warrant to convey to be codefendants of the said [7] petitioner's. That the aforesaid parties received judgment and sentences in case No. 11,073 and case No. 11032, at the same identical time the said petitioner received judgment and sentence in case No. 11074 and case No. 11032. That said petitioner alleges that he, Carl Sanders, Robert Raymond and Joe Hartman, parties aforesaid, stood before the bar of justice in the aforesaid trial court, at the same date, hour and minute, received judgment and sentences and were taken from the court by the Marshal and returned to the State Penitentiary. The petitioner alleges that the aforesaid indictment, commitment, judgment and warrant to convey No. 11073, issued out of the said trial court on the seventeenth day of September 1930 A.D., is attached hereto made a part hereof and marked as "Exhibits D".

11. The petitioner avers and alleges that he presents a certified copy of an indictment, judgment and commitment, marked as "Exhibits E", case No. 11032, attached as to "Exhibits D", as was certified out of the aforesaid trial court under a single warrant to convey the aforesaid parties named therein, excluding the petitioner from the issue in "Exhibits D". That the aforesaid parties named in the warrant to convey attached to "Exhibits D", are codefendants of the petitioner, and the peti-

tioner alleges that the sentence imposed in case No. 11074 contains no specifications of the type that appears in case No. 11032, marked as "Exhibits A" and "Exhibits E". The petitioner alleges that if the specification appearing as a separate paragraph offset from the final judgment in "Exhibits A" and "Exhibits E", had of been ordered by the sentencing judge on passing of judgment and sentence, the aforesaid specification would appear in the judgment; as in the final judgment in case No. 11,074 against Marion Bowles, codefendant of the petitioner's. The petitioner alleges that the sentences imposed under "Exhibits A, C, D, and E", were imposed at the same time and the minutes of the court will not prove otherwise.

12. The petitioner avers and alleges that an examination of the contents of "Exhibits A" will disclose that a specification is entered under the judgment and is not a part of the contents of the original judgment; therefore the petitioner claims that this specification is an addition made on the part of the clerk of the aforesaid trial court. The petitioner alleges on page one of "Exhibits A" the judgment contains but one date and that is September 17, 1930. That the last words spoken by the trial judge was as is quoted, as follows: [8] "that they each pay a fine to the United States in the sum of Ten Thousand Dollars, that execution issue therefore and that the said defendants stand committed to the said Penitentiary until said fines shall have been fully paid". The petitioner alleges

that on page two of "Exhibits A" the contents will disclose that a specification entered was inserted by William Ryan, United States Marshal from the aforesaid District and trial court. That a close examination will disclose that the clerk of the aforesaid trial court has fixed the date of the 17th day of September, A.D. 1930. And that the clerk D. H. Reed, has stated that the foregoing to be a true copy of an order made and entered in said court on the 17th. day of September, A. D. 1930, as fully as the same appears upon the records now in said clerk's office. That the clerk of the aforesaid trial court has stated that the foregoing "Exhibits A" to be entered into the records as on the date of September 17, A. D. 1930.

13. The petitioner avers and alleges that a close examination of "Exhibits C", will disclose that the specification therein entered into the judgment against Marion Bowles, said specification aforesaid is expressed in the judgment and does not appear as entry made after final judgment. The petitioner further alleges that it fully appears that the court in—pronouncing judgments and sentences in Case No. 11032 and Case No. 11,074, should have been familiar with the procedure practiced by Federal Courts on convictions gained by a Federal Court against the petitioner, at which time the petitioner was undergoing a term in a State Prison. The conviction in the Federal Court in case No. 11,032 and 11074, could have been legally gained and judgment and sentence deferred or suspended,

until the petitioner had of been released from the State Prison, and then the court could have recalled the petitioner for judgments and sentences, which would be legal and the only possible method to apply to a case such as the cases of the petitioner. But the court did not apply this method and for the reason that the petitioner failed to take the witness stand, and therefore the court was not aware of the fact that the petitioner was undergoing a term in a State Penitentiary. The petitioner alleges the court became familiar with the facts of the petitioner's prior sentence in the State Penitentiary, after the petitioner was returned to the State Authorities. That the court did not attempt to correct the situation by legal procedure, such as recalling the petitioner and deferring sentence or suspending the term of imprisonment before or after the term of court in which [9] the petitioner was convicted. Therefore the petitioner alleges a specification was entered by the clerk in an attempt to post date the commencement of the sentence. That such a specification was entered without any date as to when the sentence begun, and therefore the petitioner alleges the sentence begun to run as on the date of September 17, 1930.

14. The petitioner avers and alleges that under case No. 11,032 he received sentences as follows: Five years on Count One, Three years on Count Two, Two years on Count Three: That the sentences were to be served consecutively and were aggregated together making a total of ten years. That in

case No. 11032, the petitioner was fined ten thousand dollars, said fine to stand committed. The petitioner further alleges that in case No. 11,074, the petitioner was sentenced to a term of five years and to run consecutively with case No. 11032. That the sentence of five years in case No. 11,074, was aggregated together with the sentences imposed in Case No. 11,032. This said aggregation of sentences in both cases, No. 11,032 and 11,074, making a total sentence of fifteen years and a fine of ten thousand dollars. That the petitioner was due out on a discharge on the fifteen year sentence October 12, 1940. That the petitioner would have been subject to serving an extra thirty days for payment of fine under the pauper's oath. This would of made the petitioner serve ten years, one month and twenty five days to complete and satisfy the final judgments in case No. 11,032 and 11,074.

15. The petitioner prays the Honorable Court to let the Subpoena for letters and Records in support of the foregoing allegations issue out of the Honorable Court, directed at such persons therein named, to furnish your honorable court with such evidence that is in connection with the petitioner's case No. 11,032 and 11,074.

16. The petitioner avers and alleges that since his incarceration in the United States Penitentiary at Alcatraz Island, California, located in the Southern Division, Northern District of California, San Francisco, he has never waived any of his rights in any manner whatsoever.

17. The petitioner avers and alleges that he is illegally and unlawfully restrained of his liberty, prays that a writ of Habeas Corpus issue, directed to the Warden of the United States Penitentiary at Alcatraz, California, to bring and have your petitioner before your Honor, instanter, together with the true [10] cause of his detention, to the end that due inquiry may be had in the Chambers, and that your Honor may proceed in a summary way to determine the facts in this case and the legality of the imprisonment of the said petitioner, restraint, and detention, and further, that an order issue from under the seal of your Honor, discharging your petitioner from illegal and unlawful restraint and detention, and your petitioner will ever pray.

CECIL WRIGHT.

Petitioner [11]

AFFIDAVIT

State of California

County of San Francisco—ss.

Personally appeared before me, Cecil Wright, who being duly sworn, deposes and says that he has read the foregoing attached petition, that he knows the contents thereof, and that the allegations therein contained are true except as to such matters as are stated upon information and belief and that these he verily believes to be true and that he is entitled to the relief therein sought.

CECIL WRIGHT

Affiant and Petitioner.

Subscribed and sworn before me, a Notary Public, in and for the aforesaid County and State, this 22 day of September in the year of our Lord, 1941 A. D.

E. S. MILLER

Notary Public

Associate Warden U. S. P.,
Alcatraz Island, Calif.

Warden-Associate Warden authorized by the
Act of February 11, 1938, to administer
oaths.

Filed in the District Court.....A. D. 1941. [12]

“EXHIBITS F”

[Title of Cause.]

PETITION FOR SUBPOENA OF LETTERS
AND RECORDS IN SUPPORT OF AL-
LEGATIONS SET FORTH IN THE COM-
PLAINT HERETOFORE ATTACHED AND
STYLED IN THE FORM OF HABEAS
CORPUS.

1. The petitioner hereof subpoenas the records and minutes of the court in case No. 11032 and 11074. That the records and minutes of the court will support the allegations in reference to the specification entered into the judgment.

2. The petitioner hereof subpoenas the duplicate copies of letters addressed to the petitioner from the trial court, written and signed by Judge Walter

C. Lindley. That the trial judge wrote a letter to the petitioner in 1935 and informed the petitioner that the sentence imposed in case No. 11,032 and 11,074 had begun and that he had lost jurisdiction of the said case after the expiration of the term of court in which the said petitioner was convicted and especially after the petitioner's sentence had begun. This letter was written in 1935 at which time the petitioner was incarcerated in the Southern Illinois Penitentiary and signed by the trial judge. Therefore the petitioner claims the right to have copies of such letters in court to prove that the specification entered into the judgment was entered by the clerk of the court after the sentence had begun to run.

3. The petitioner hereof subpoenas the central files in possession of James A. Johnston, Warden of the United States Penitentiary, Alcatraz Island, California, named as respondent in the Petition for a Writ of Habeas Corpus, heretofore attached to this said subpoena. That said respondent to have in his possession a certified copy of the judgment and commitment appearing as from the originals issued under the hand and seal of the trial court, and to further show from the records by what laws the respondent was empowered to start a sentence nine years one month and thirteen days after judgment and sentence was imposed by the trial court and entered into the records and minutes of [13] the Court.

4. The petitioner hereof subpoenas the records from the office of James A. Finch, United States

Attorney, Washington, D. C. That such records appearing in the form of letters on file in correspondence between the petitioner and the late United States Senator, James Hamilton Lewis. That such letters will furnish proof and support allegations set forth in the complaint heretofore attached to this said subpoena. That a letter written to the petitioner by Judge Walter C. Lindley in 1935, at which time said petitioner was incarcerated in the State Penitentiary and said letter states the petitioner's sentence had begun and that the only remedy on the part of the petitioner was by applying for executive clemency. That such a letter is on file in the office of the aforesaid Pardon Attorney, and the said petitioner claims he is entitled to have the letter as the original to be produced into Court to verify the petitioner's allegations.

5. The petitioner avers and alleges that he is entitled to the above mentioned letters and records and that such records and letters be produced by subpoena; said subpoena to be issued out of the United States District Court, Northern District, Southern Division, San Francisco, California, to the above named persons listed in the said Petition for subpoena of Letters and Records, in support of Allegations set forth in the Complaint heretofore attached and styled in the form of Habeas Corpus.

(Signed) CECIL WRIGHT

Petitioner, Affiant

AFFIDAVIT

County of San Francisco

State of California—ss.

Personally appeared before me Cecil Wright, deposes and says he has read the foregoing subpoena and knows the contents thereof, and that he is entitled to the records and letters therein sought to support the allegations set forth in the Petition heretofore attached and styled as Habeas Corpus.

(Signed) CECIL WRIGHT,
 Affiant-Petitioner

Subscribed and sworn to before me a Notary Public this 22 day of September, A. D. 1941.

E. S. MILLER

Notary Public

Associate Warden U. S. P.,
Alcatraz Island, Calif.

Warden-Associate Warden authorized by the
Act of February 11, 1938, to administer
oaths. [14]

EXHIBITS "A"

In the District Court of the United States
for the Eastern District of Illinois

Wednesday, September 17, 1930

Present: Honorable Walter C. Lindley, Judge.

No. 11032

THE UNITED STATES

vs.

ROBERT RAYMOND, CARL SANDERS, JOSEPH HARTMAN and TUCK WRIGHT

¶

INDICTMENT VIOLATION OF
POSTAL LAWS

1st—Breaking into Post Office 18 USCA 315

2nd—Stealing Govt. Property (18 USCA) 313

3rd—Conspiracy.

And now on this 17th day of September, A. D. 1930, comes the United States, the plaintiff in this case, by Harold G. Baker, United States Attorney for the Eastern District of Illinois, and comes also the defendant, Robert Raymond, Carl Sanders, Joseph Hartman and Tuck Wright, each in person, and by J. D. Allen, their attorney. And now comes the defendant, Tuck Wright, by his said attorney, and enters motion for a continuance, which said motion is by the court denied, and now comes the said defendant and enters motion for separate trial,

which said motion is by the court denied, and issue being joined, the following named jurors are tendered and accepted to wit: Stephen Gannon, H. R. Boeschen, G. W. Gilliland, Oscar Forth, D. C. Burrow, Sam Wilson, Harry Beard, Mark Wiseman, William Basinger, Charles Tilton, Dan Fritz and J. W. Snider, who are duly sworn to well and truly try the issues joined in this case and a true verdict render according to law and evidence. And after hearing the evidence in the case, the argument of counsel, and the instructions of the Court, the jury retire to consider their verdict, and afterward come into Court and for verdict say: "We, the jury find the defendants, Carl Sanders, Tuck Wright, Joe Hartman and [15] Robert Raymond guilty in manner and form as charged in the indictment." And the said defendants being arraigned at the bar of the Court for sentence and they having nothing further to say why sentence should not be pronounced against them, it is, therefore considered and adjudged by the Court that the said defendants Robert Raymond, Carl Sanders, Joseph Hartman and Tuck Wright, for the offense by them committed in manner and form as charged in the said indictment and as found by the jury in this case each be imprisoned in the United States Penitentiary at Leavenworth, Kansas, for the period of five years on the 1st count of the indictment, three years on the 2nd count and two years on the 3rd count, from the date of delivery of the said defendants to the Keeper or Warden of the said Peni-

tentiary, said sentences to run and be served consecutively; that they each pay a fine to the United States in the sum of Ten Thousand Dollars, that execution issue therefor and that the said defendants stand committed to the said Penitentiary until said fines shall have been fully paid.

(It is further ordered by the court that the sentences herein imposed shall begin upon the expiration of the sentences which the said defendants are now serving in the Southern Illinois Penitentiary.)

(Entry made by Clerk of District Court.) [16]

United States of America

Eastern District of Illinois—ss.

I, D. H. Reed, Clerk of the District Court of the United States for the Eastern District of Illinois, do hereby certify the foregoing to be a true copy of an order made and entered in said Court on the 17th day of September, A. D. 1930, as fully as the same appears upon the records now in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the Seal of said Court, at Danville in the District aforesaid, this 17th day of September, A. D. 1930.

(Signed) D. H. REED

[Seal] Clerk.

The true and original date of judgment and sentence.

(I hereby certify that I have executed the within writ as to Tuck Wright by transporting and deliver-

ing him to the U. S. Penitentiary at Leavenworth, Kas., the 1st day of November, A. D. 1939.)

(Entered 9 years, 1 month, 15 days after sentence and final judgment.)

(Signed) WILLIAM RYAN

U. S. Marshal.

22413

No. 11032

United States District Court, Eastern
District of Illinois

THE UNITED STATES

vs.

ROBERT RAYMOND, CARL SANDERS, JOSEPH HARTMAN and TUCK WRIGHT. [17]

CERTIFIED COPY OF SENTENCE

Filed Nov. 7, 1939.

(This date is not in conflict with any other date mentioned and is of no bearings on the day sentence begun to run.)

D. H. REED

Clerk

10 years U. S. Pen at Leavenworth, Kansas; and to pay a fine of \$10,000.00; stand committed.

District Court of the United States of America
Eastern District of Illinois

I, D. H. Reed, Clerk of the District Court of the United States for the Eastern District of Illinois,

and keeper of the records and seals thereof, do hereby certify the foregoing to be a true copy of the Judgment and Commitment in the matter of the United States vs. Robert Raymond, Carl Sanders, Joseph Hartman and Tuck Wright, Criminal Case No. 11032, as fully as the same appears from the original now on file and of record in my office as Clerk of said Court.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at my office in the City of East St. Louis, in the District aforesaid, this 19th day of June A. D. 1941.

(The above date is the date when papers were received by the petitioner.)

[Seal]

“Certified.” [18]

(Here follows “Exhibits A”, which is a copy of the Indictment in No. 11032, United States vs. Robert Raymond, et al, and was copied as Exhibit “O” in Case No. 23744.)

(Following “Exhibit A” is the following certificate)

District Court of the United States of America
Eastern District of Illinois

I, D. H. Reed, Clerk of the District Court of the United States for the Eastern District of Illinois, and keeper of the records and seals thereof, do hereby certify the foregoing to be a true copy of Indictment in the case of the United States vs.

Robert Raymond, et al., Criminal Case No. 11032, as fully as the same appears from the original now on file and of record in my office as Clerk of said Court.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at my Office in the City of East St. Louis, in the District aforesaid, this 19th day of June, A. D. 1941.

Clerk

(The above date is when petitioner received the paper from the court.)

[Seal]

Seal defaced by Issac Sway, Sr., Warden's Assistance, United States Penitentiary, Leavenworth, Kansas. [19]

“EXHIBITS C.”

In the District Court of the United States
for the Eastern District of Illinois

Wednesday, September 17, 1930

Present: Honorable Walter C. Lindley, Judge.

No. 11074

THE UNITED STATES

vs.

MONTE CRIST, CECIL WRIGHT, alias TUCK
WRIGHT and MARION BOWLES

INDICTMENT

VIOLATION NATIONAL MOTOR VEHICLE
THEFT ACT.

1 count, Transportation 18 USCA 408

And Now on this 17th day of September, A. D. 1930, comes the United States, the plaintiff in this case, by Harold G. Baker, United States Attorney for the Eastern District of Illinois, and comes also the defendants Cecil Wright alias Tuck Wright and Marion Bowles, each in person, and by J. D. Allen, their attorney. And now comes the defendant, Cecil Wright alias Tuck Wright, and by leave of court withdraws his plea of not guilty heretofore entered herein, and instead thereof says that he is guilty in manner and form as charged in the in-

dictment. And now issues being joined as to the defendant, Marion Bowles, and jury being waived, his case comes on for hearing before the Court, and after hearing the evidence in the case and the arguments of counsel and being fully advised in the premises, the court finds the defendant, Marion Bowles guilty in manner and form as charged in the indictment. And now the said defendants, Cecil Wright alias Tuck Wright and Marion Bowles being before the court for sentence and they having nothing to say why sentence should not be pronounced against them—It is, therefore, considered and adjudged by the Court, that the said defendant Cecil Wright alias Tuck Wright, for the offense by him committed in manner and form as charged in the indictment, and as by him confessed, be imprisoned in the United States Peniten- [20] tiary at Leavenworth, Kansas, for the period of five years, said sentence to run and be served consecutively with the sentence imposed against the said defendant in case No. 11032, and that said defendant be committed to said Penitentiary pursuant to said sentence. And it is considered and adjudged by the Court that the defendant, Marion Bowles, for the offense by him committed, in manner and form as charged in the indictment and as found by the court, be imprisoned in the United States Penitentiary at Leavenworth Kansas, for the period of five years from the date of the delivery of the said defendant to the Keeper or Warden of the said Penitentiary, said sentence to begin upon the ex-

piration of the sentence which the said defendant is now serving in the Southern Illinois Penitentiary, and that the said defendant be committed to the United States Penitentiary pursuant to said sentence.

A close examination of the contents will disclose that this judgment contains a specification entered into the judgment against Marion Bowles codefendant of the petitioner in Cause No. 11,074, but is not a specification against the petitioner. That the specification in this above judgment does not appear as the type of construction of a specification entered into the judgment in Case No. 11,032 against the petitioner. [21]

United States of America
Eastern District of Illinois—ss.

I, D. H. Reed, Clerk of the District Court of the United States for the Eastern District of Illinois, do hereby certify the foregoing to be a true copy of an order made and entered in said Court on the 17th day of September, A. D. 1930, as fully as the same appears upon the records now in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the Seal of said Court, at Danville in the District aforesaid, this 17th day of September, A. D. 1930.

(Signed) D. H. REED

[Seal] Clerk

The true and original date of judgment and sentence.

(I hereby certify that I have executed the within writ by transporting and delivering the within named Tuck Wright to the U. S. Penitentiary at Leavenworth, Kas., the 1st day of November A. D. 1939.)

(Entered 9 years, one month, 15 days after sentence and final judgment.)

(Signed) WILLIAM RYAN
U. S. Marshal

#17848
No. 11074

United States District Court, Eastern
District of Illinois

THE UNITED STATES

vs.

MONTE CRIST, CECIL WRIGHT, alias TUCK
WRIGHT and MARION BOWLES [22]

CERTIFIED COPY OF SENTENCE

Filed Nov. 7, 1939.

(This date is not in conflict with any other date mentioned and is of no bearings on the day sentence begun to run.)

D. H. REED
Clerk

5 years U. S. Pen at Leavenworth, Kansas to run and be served consecutively with sentence in Criminal Case No. 11032.

District Court of the United States of America
Eastern District of Illinois

I, D. H. Reed, Clerk of the District Court of the United States for the Eastern District of Illinois, and keeper of the records and seals thereof, do hereby certify the foregoing to be a true copy of the judgment and commitment in the cause of The United States vs. Monte Crist, Cecil Wright, Alias Tuck Wright and Marion Bowles, Criminal Case No. 11074, as fully as the same appears from the original now on file and of record in my office as Clerk of said Court.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at my office in the City of East St. Louis, in the District aforesaid, this 19th day of June A. D. 1941.

Clerk

(The above date is when petitioner received papers from the Court.)

[Seal]

“Certified” [23]

EXHIBITS “C”—(Continued)

In the District Court of the United States of America for the Eastern District of Illinois

May Term, A. D. 1930

Eastern District of Illinois: ss.—The Grand Jurors for the United States of America empaneled

and sworn in the District Court of the United States of America, for the Eastern District of Illinois, at the May Term of said Court in the year A. D. 1930, and inquiring for said district upon their oaths present: that

Monte Crist,
Cecil Wright, and
Marion Bowles,

hereinafter called the defendants, on or about the 19th day of April, A. D. 1930, did unlawfully, knowingly and feloniously transport and cause to be transported in interstate commerce, one certain Ford Sedan motor vehicle, then and there bearing motor number A-2087965, from at or near Lovington, in the County of Moultrie, in the State of Illinois, in the Eastern District of Illinois, and within the jurisdiction of said court, to East Chicago, in the State of Indiana, which said motor vehicle had theretofore been stolen at Lovington, in the State of Illinois, the said defendants then and there well knowing the same to have been stolen:

Against the peace and dignity of the United States of America and contrary to the form of the statute of the same in such case made and provided.

(Signed) HAROLD G. BAKER

United States Attorney [24]

(Copy)

No. 11074

United States Dist. Court
East. District of Ill.

..... Division

THE UNITED STATES OF AMERICA

vs.

MONTE CRIST, et. al.

INDICTMENT

Violation Natl. Motor Vehicle
Theft Act

A true bill,

(Signed) A. H. FAVREAU
Foreman

Filed in open Court this day of
A. D. 19....

.....

Clerk

Bail, \$5,000.00

(Signed) HAROLD G. BAKER
U. S. Attorney [25]

District Court of the United States of America
Eastern District of Illinois

I, G. H. Reed, Clerk of the District Court of the
United States for the Eastern District of Illinois,

and keeper of the records and seals thereof, do hereby certify the foregoing to be a true copy of the Indictment in the case of The United States vs. Monte Crist, et al., Criminal Case No. 11074, as fully as the same appears from the original now on file and of record in my office as Clerk of said Court.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at my office in the City of East St. Louis, in the District aforesaid, this 19th day of June A. D. 1941.

[Seal]

Certified

Clerk

(The above date is when petitioner received the papers from the Court.) [26]

“EXHIBITS E”

From page 1 to 5

“EXHIBITS D”

From page 6 to 10

In the District Court of the United States
For the Eastern District of Illinois

Wednesday, September 17, 1930

Present: Honorable Walter C. Lindley, Judge

THE UNITED STATES

vs.

ROBERT RAYMOND, CARL SANDERS,
JOSEPH HARTMAN and TUCK WRIGHT

No. 11032

INDICTMENT VIOLATION OF POSTAL
LAWS

1st—Breaking into Post Office

2nd—Stealing Government Property

3rd—Conspiracy.

And now on this 17th day of September, A. D. 1930, comes the United States, the plaintiff in this case, by Harold G. Baker, United States Attorney for the Eastern District of Illinois, and comes also the defendants, Robert Raymond, Carl Sanders, Joseph Hartman and Tuck Wright, each in person, and by J. D. Allen, their attorney. And now comes

the defendant Tuck Wright, by his said attorney, and enters motion for a continuance, which said motion is by the court denied, and now comes the said defendant and enters motion for a separate trial, which said motion is by the court denied, and issue being joined, the following named jurors are tendered and accepted to wit: Stephen Gannon, H. R. Boesch, G. W. Gilliland, Oscar Forth, D. C. Burrow, Sam Wilson, Harry Beard, Mark Wiseman, William Basinger, Charles Tilton, Dan Fritz and J. W. Snider, who are duly sworn to well and truly try the issues joined in this case and a true verdict render according to law and evidence. And after hearing the evidence in the case, the arguments of counsel, and the instructions of the Court, the jury retire to consider their verdict, and afterward come into Court and for verdict say: [27]

“We, the jury find the defendants, Carl Sanders, Tuck Wright, Joe Hartman and Robert Raymond guilty in manner and form as charged in the indictment.” And the said defendants being arraigned at the bar of the Court for sentence and they having nothing further to say why sentence should not be pronounced against them, it is therefore, considered and adjudged by the Court that the said defendants Robert Raymond, Carl Sanders, Joseph Hartman and Tuck Wright, for the offense by them committed in manner and form as charged in the said indictment and as found by the jury in this case each be imprisoned in the United States Penitentiary at Leavenworth, Kansas, for the period of five years on the 1st count of the indictment, three

years on the 2nd count and two years on the 3rd count, from the date of delivery of the said defendants to the Keeper or Warden of the said Penitentiary, said sentences to run and be served consecutively; that they each pay a fine to the United States in the sum of Ten Thousand Dollars, that execution issue therefor and that the said defendants stand committed to the said Penitentiary until said fines shall have been fully paid.

(It is further ordered by the court that the sentences herein imposed shall begin upon the expiration of the sentences which the said defendants are now serving in the Southern Illinois Penitentiary.)

(Entry by Clerk of Court.)

“Exhibits E” and “Exhibits D” attached together Case No. 11,032 and Case No. 11,073 was received in this manner under one warrant to convey appearing on Page 7, of Exhibits D.” [28]

In the District Court of the United States of America for the Eastern District of Illinois

May Term, A. D. 1930

Eastern District of Illinois; ss.—The Grand Jurors for the United States of America empaneled and sworn in the District Court of the United States of America, for the Eastern District of Illinois, at the May Term of said court in the year 1930 and inquiring for said district upon their oaths present: that

Robert Raymond

Carl Sanders

Joseph Hartman

Monte Crist and

Tuck Wright, whose true Christian name is
to the Grand Jurors, unknown,

hereinafter called the defendants on, to-wit, the 9th day of April, A. D. 1930 at Strasburg, in the County of Shelby, in the State of Illinois, in the Eastern District of Illinois and within the jurisdiction of said court, did then and there unlawfully, forcibly and feloniously break into a certain building used as a Postoffice of the United States at Strasburg, Illinois with the intent then and there in them, the said defendant, to commit larceny in said building so used as a Postoffice of the United States.

Against the peace and dignity of the United States of America and contrary to the form of the statute of the same in such case made and provided.

(Signed) HAROLD G. BAKER

United States Attorney [29]

SECOND COUNT

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present: that

Robert Raymond

Carl Sanders

Joseph Hartman

Monte Crist and

Tuck Wright, whose true Christian name is
to the Grand Jurors unknown,

hereinafter called the defendants on, to-wit, the 9th day of April, A. D. 1930 at Strasburg, in the County of Shelby, in the State of Illinois, in the Eastern District of Illinois and within the jurisdiction of said court did, then and there unlawfully and feloniously steal, take and carry away from a certain building occupied by the Postoffice Department of the United States at Strasburg, Illinois certain personal property belonging to the United States, to-wit, \$2.43, a more particular description of which said personal property is to the Grand Jurors unknown, with the intent then and there in them, the said defendants, to convert said personal property to their own use.

Against the peace and dignity of the United States of America and contrary to the form of the statute of the same in such case made and provided.

(Signed) HAROLD G. BAKER

United States Attorney. [30]

THIRD COUNT

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present: that

Robert Raymond

Carl Sanders

Joseph Hartman

Monte Crist and

Tuck Wright, whose true Christian name is to the Grand Jurors unknown,

hereinafter called the defendants did, on or about the 1st day of April, A. D. 1930 and thence continuously throughout the period of time from that

date to the date of the return and filing of this indictment, in the State of Illinois, and within the Eastern District of Illinois aforesaid, did unlawfully, wilfully, knowingly and feloniously conspire, combine, confederate and agree together, each with the other, to, during said period of time, in said state and district to violate Sections 313 and 315 of the United States Code, that is to say that they so conspired, confederated and combined and agreed together, each with the other, to unlawfully break into and enter a certain Postoffice of the United States at Strasburg, Illinois and to steal, take and carry away from said Postoffice certain personal property then and there belonging to the United States. And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present that in the furtherance of and in the pursuance of and in the execution of and for the purpose of carrying out and to effect the object, design and purpose of said conspiracy, combination, confederation and agreement the following overt acts were committed within the jurisdiction of said court: [31]

1. That on or about April 9, A. D. 1930 the said Robert Raymond, Carl Sanders, Joseph Hartman, Monte Crist and Tuck Wright, did assault one William M. Wilson at Strasburg, Illinois.

2. That on or about April 9, A. D. 1930, the said Robert Raymond, Carl Sanders, Joseph Hartman, Monte Crist and Tuck Wright, did break and enter the Postoffice of the United States at Strasburg, Illinois.

3. That on or about April 9, A. D. 1930 the said Robert Raymond, Carl Sanders, Joseph Hartman, Monte Crist and Tuck Wright, did steal, take and carry away \$2.43 from the Postoffice of the United States at Strasburg, Illinois.

Against the peace and dignity of the United States of America and contrary to the form of the statute of the same in such case made and provided.

(Signed) HAROLD G. BAKER

United States Arrorney.

Endorsed:

No. 11,032 United States District Court, Eastern District of Illinois The United States vs. Robert Raymond, et al Indictment for Violation of the Postal Laws. A True Bill (Signed) A. H. Favreau. Filed Jun. 5 1930. Douglas H. Reed, U. S. Court Clerk. (Signed) Harold G. Baker, U. S. Attorney. \$10,000. [32]

“EXHIBITS D”

In the District Court of the United States
For the Eastern District of Illinois

Wednesday, September 17th, A. D. 1930

Present: Honorable Walter C. Lindley, Judge.

No. 11073

THE UNITED STATES

vs.

CARL SANDERS, ROBERT RAYMOND and
JOE HARTMAN

VIOLATION NATIONAL MOTOR VEHICLE
THEFT ACT

1st—Transporting Stolen Car.

And Now on this 17th day of September, A. D. 1930, comes the United States, the plaintiff in this case, by Harold G. Baker, United States Attorney for the Eastern District of Illinois, and comes also the defendants Carl Sanders, Robert Raymond and Joe Hartman, each in person, and by J. D. Allen, their attorney. And now come the said defendants by their said attorneys and by leave of court first had and obtained, withdraw their pleas of not guilty heretofore entered herein, and instead say that they are guilty in manner and form as charged in the indictment, and they having nothing to say why sentence should not be pronounced against

them—It is therefore, considered and adjudged by the Court, that the said defendants Carl Sanders, Robert Raymond and Joe Hartman, for the offense by them committed, in manner and form as charged in the said indictment and as by them confessed, each be imprisoned in the United States Penitentiary at Leavenworth, Kansas, for the period of five years, said sentence to run and be served consecutively with the sentence imposed against said defendants in cause No. 11032 in this court, and that the said defendants be committed to the said Penitentiary pursuant to said sentence.

The above sentence was imposed in the case of 11,073, at the same time sentence was imposed in case No. 11032. If the specification had of been ordered by the trial court [33] then both judgment 11,073 and 11,032 would contain the specification that appears in case No. 11032. This proves that the specification was entered into case No. 11032 by the Clerk, after judgment was passed by the Court. [34]

In the District Court of the United States of
America for the Eastern District of Illinois

May Term, A. D. 1930

Eastern District of Illinois; ss.—The Grand Jurors for the United States of America empaneled and sworn in the District Court of the United States of America, for the Eastern District of Illinois, at the May Term of said court in the year

1930 and inquiring for said district upon their oaths present: that

Monte Crist,

Carl Sanders,

Robert Raymond,

Joseph C. Hartman alias

Joe Hartman, and divers other persons whose names are to the Grand Jurors unknown,

hereinafter called the defendant, on or about April 12, A. D. 1930, did unlawfully, knowingly and feloniously transport and cause to be transported in interstate commerce, one certain Ford Roadster motor vehicle, then and there bearing motor number A-1-551-343, from at or near Westfield, in the County of Clark, in the State of Illinois, in the Eastern District of Illinois and within the jurisdiction of this court, to Veedersburg, in the State of Indiana, which said motor vehicle had theretofore been stolen in the State of Illinois, aforesaid, the said defendants then and there well knowing the same to have been stolen.

Against the peace and dignity of the United States of America and contrary to the form of the statute of the same in such case made and provided.

(Signed) HAROLD G. BAKER

United States Attorney. [35]

Endorsed:

No. 11,073 United States District Court, Eastern District of Illinois, Division. The

United States of America, vs. Monte Crist, et al.
Indictment National Motor Vehicle Theft Act. A
true bill, (Signed) A. H. Favreau, Foreman. Filed
June 5 1930. D. H. Reed, Clerk. Bail, \$5000.00.
(Signed) Harold G. Baker, U. S. Attorney. [36]

District Court of the United States of America
Eastern District of Illinois

The President of the United States to the Marshal
of the Eastern District of Illinois—Greeting:

Whereas, at the September Term of the District
Court of the United States for said Eastern District
of Illinois, begun and held on the 1st day of September,
A. D. 1930, at the City of Danville, in said District,
to wit:

On the 17th day of September, A. D. 1930 Carl
Sanders, Robert Raymond, Joe Hartman indicted
for Violation National Motor Vehicle Theft Act
having plead guilty were each sentenced to be imprisoned
in the United States Penitentiary, at
Leavenworth, Kansas, for the period of five years
Said sentence to run and be served consecutively
with the sentences imposed against said defendants
in cause 11032

You Are Therefore Commanded to take the said
Carl Sanders, Robert Raymond and Joe Hartman
and them convey as soon as possible to the said
United States Penitentiary, at Leavenworth, Kansas,
there to be imprisoned in pursuance of the said
sentence, and to deliver to the Warden of said Peni-

tentiary a duly certified copy of said sentence, under the seal of the said Court.

Hereof Fail Not, and of this writ and your doings thereon make due return.

Witness, the Honorable Walter C. Lindley, Judge of said Court, at Danville, in the said District aforesaid, this 17th day of September, A. D. 1930.

(Signed) D. H. REED

[Seal]

Clerk [37]

A true copy of the original issued out of the Court but never carried out until June 26, 1934. The above mentioned parties are codefendants of the said petitioner's in Cause No. 11,032, and sentence was imposed on each of the parties, including the petitioner at the same time as in case No. 11,074 and No. 11032.

United States of America,
Eastern District of Illinois—ss.

I have executed the within writ by transporting and delivering the within-named defendant Carl O. Sanders & Joseph Hartman to the Warden of United States Penitentiary, at Leavenworth, Kansas, as I am herein commanded, this 26 day of June, A. D. 1934.

(Signed) ARTHUR M. BURKE

U. S. Marshal

By (Signed) HOWARD ROSS

Deputy

Marshals's Fees, \$.

(The above date is of when the codefendants of the petitioner's were delivered into the Leavenworth Penitentiary.)

17848 to 22413

No. 11073

District Court of the United States
Eastern District of Illinois

THE UNITED STATES

vs.

CARL SANDERS, ROBERT RAYMOND and
JOE HARTMAN [38]

WARRANT TO CONVEY

Filed Nov. 15, 1934.

D. H. REED,
Clerk.

District Court of the United States of America
Eastern District of Illinois

I, D. H. Reed, Clerk of the District Court of the United States for the Eastern District of Illinois, and keeper of the records and seals thereof, do hereby certify the foregoing to be a true copy of Indictment in Criminal Case No. 11032, together with plea and sentence, Indictment in Criminal Case No. 11073, together with plea and sentence and Warrant to Convey, both cases of the United States vs. Carl

Sanders, et al, as fully as the same appear from the originals now on file and of record in my office.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court, at my office in the City of East St. Louis, in the District aforesaid, this 28th day of October, A. D. 1935.

D. H. REED

Clerk.

(The above date is when petitioner's codefendants received indictment, commitments, judgments and warrants to convey.) [39]

[Seal]

(Seal destroyed by Issac Swan, United States Penitentiary, Leavenworth, Kansas, Sr. Wardens Assistance.)

[Endorsed]: Filed Oct. 14, 1941.

WALTER B. MALING,

Clerk. [40]

In the District Court of the United States of America Within and for the Northern District of California, Southern Division, San Francisco.

Civil Action H. C.

No. 23611 S

CECIL WRIGHT,

Petitioner,

vs.

JAMES A. JOHNSTON, Warden, U. S. Penitentiary, Alcatraz, California,

Respondent.

Cecil Wright

In Propria Persona

PETITION FOR WRIT OF HABEAS CORPUS

To: The Honorable Judge Michael J. Roche.

Now comes Cecil Wright, hereinafter referred to as the petitioner, and presents this his petition for a Writ of Habeas Corpus.

Your petitioner hereby respectfully submits the following statute empowering Your Honor to hear and consider this petition.

R. S. (752 U.S.C., Title 28) 452

Your petitioner asserts a previous supplication was filed on October 14, 1941, the same being denied on October 18, 1941. The petitioner asserts he made several mistakes in his first application that

offset controlling cases. The previous petition was based on one point, and the petitioner has set forth in this application two additional points that was not included in the previous application.

Statement of Facts

Your petitioner asserts he is a citizen under color of the United States and he is being restrained of his liberty by virtue of judgments and commitments that were void on October 12, 1940. That James A. Johnston, Warden United States Penitentiary, Alcatraz, California, herein referred [41] to as the respondent, is detaining and denying your petitioner his freedom on a sentence not authorized by statute, of his freedom on a sentence not authorized by statute.

II

Your petitioner asserts he was indicted in the United States District Court, Eastern District of Illinois, Dansville, hereinafter referred to as the trial court, at the May, 1930, A.D., term thereof setting under Criminal Cause No. 11032 and No. 11074, certified copies of indictments, judgments and commitments annexed hereto made a part hereof and marked petitioner's "exhibits A and B respectively."

III

The petitioner avers and alleges that he was first in custody of Federal Authorities having been indicted at the May 1930 term of Court. The petitioner was entitled to have his Federal charges

tried before being surrendered to State Authorities. The petitioner alleges he was confined to the Vermilion County Jail and held therein to await trial in Cause No. 11032 and No. 11074. The petitioner alleges he was confined in the Vermilion County jail from June 19, 1930 to July 23, 1930. A certified copy of the court record is annexed hereto made a part hereof and marked petitioner's "exhibit C". The petitioner alleges he was surrendered by the Federal Authorities to the Sheriff of Clark County on July 23, 1930.

IV

The petitioner avers and alleges he was placed on trial convicted and sentenced to the Southern Illinois State Penitentiary on July 25, 1930. The petitioner was sentenced to serve a term of not less than one year and no more than natural life. The petitioner alleges the state and Federal [42] do not exercise concurrent jurisdiction, unless the offense is punishable under both sovereignties. In the petitioner's case, the Federal offense was not punishable under State statute. And in the petitioner's state charge the offense was not punishable under Federal statute and a certified copy of the State proceedings is annexed hereto and made a part hereof and marked petitioner's "exhibit D."

V

The petitioner avers and alleges he was surrendered by Federal Authorities to the sheriff of Clark

County, Marshall, Illinois, immediately placed on trial, convicted and sentenced to serve a term of not less than one year and no more than natural life. The petitioner alleges he was conveyed to a Southern Illinois State Penitentiary, Menard, Illinois, on July 26, 1930.

VI

The petitioner avers and alleges he was taken from the Southern Illinois State Penitentiary on September 14, 1930, and placed under the custody of the United States Marshal at Danville, Illinois. The petitioner alleges he was convicted and sentenced in Criminal Cases No. 11032 and No. 11074 for terms totaling fifteen years. The petitioner alleges he was sentenced on September 17, 1930 to the United States Penitentiary, Leavenworth, Kansas. That the United States Marshal surrendered the petitioner back to the State Authorities on September 18, 1930, a certified copy of jail commitment is annexed hereto and made a part hereof and marked petitioner's "exhibit E."

VII

The petitioner avers and alleges he was paroled on October 9, 1939, by the Illinois State Parole Board. The Illinois State Parole Authorities notified the United States [43] *States* Marshal, and on October 31, 1939, the petitioner was conveyed from the Southern Illinois State Penitentiary to the United States Penitentiary, Leavenworth, Kansas,

on commitments dated on September 17, 1930. The petitioner alleges that he was not discharged from the State Penitentiary and was only released on parole. That for verification of State Parole a certified copy of a letter from the State Board of Paroles is annexed hereto, made a part hereof and marked petitioner's "Exhibit F".

VIII

The petitioner avers and alleges that the trial judge wrote a letter to the petitioner and stated the sentence imposed on September 17, 1930, had started to run. That the court had lost jurisdiction over the petitioner's case after the expiration of the term of court in which the petitioner was convicted and especially after sentence had begun. Therefore the petitioner did not attempt to do anything in reference to his federal sentence while incarcerated in the States Penitentiary. The petitioner alleges if the trial judge's statement was true and the court had lost jurisdiction over the case after one term of court had expired, then its not within reason the sentence could be postdated to a date unknown to the court. The petitioner alleges that twenty seven terms of court had expired before the marshal executed the commitments. If the sentence of September 17, 1930, was the judgment of the court and was entered upon the records as a final judgment, the court was without power to keep the sentence from beginning to run.

IX

The petitioner avers and alleges the clerk of the court entered a specification under judgment No. 11032 after the [44] petitioner had been taken from the court room. The specification is no part of the sentence or judgment imposed by the trial judge. If the specification was a part of the original judgment, it would appear in the body of the judgment, and not as a footnote offset from the judgment of the court. If such an order was ordered by the court, the specification would also appear in the commitment. The petitioner was sentenced in the absence of statute and it has been a rule if the commitment is silent to the date the sentence is to begin, it will commence with the date of delivery to the designated jail. The petitioner alleges after sentence was imposed he was taken from the court and placed in the county jail. The petitioner alleges he was surrendered back to the State Authorities on September 18, 1930.

X

The petitioner avers and alleges the judgment No. 11074 does not provide a specification against the petitioner. The judgment No. 11074 provides the date of Wednesday, September 17, 1930, and the commitment No. 11074 provides the date of September 17, 1930. The sentence imposed in case No. 11074 was ordered to run consecutively with the sentence imposed on Case No. 11032. The sentences in Case No. 11032 and the sentence in case

No. 11074 were aggregated totaling fifteen years. Therefore the sentence in Case No. 11074 would start to run from the date of the judgment and commitment, as the sentence imposed in case No. 11074 could not be served separately from the sentence imposed in case No. 11032. On aggregation the sentences in both cases would start at the same time and would be served together. No provisions being made for the sentences in either case to start on October 31, 1939, the sentence in each case would start to run from the date shown by the [45] judgments and commitments.

XI

The petitioner avers and alleges that his sentence was imposed in the absence of statute and he was committed to the discretion of the court. The court imposed judgments and sentences on September 17, 1930, and the execution of sentence was not stayed by an appeal. The trial judge declared the sentence of September 17, 1930 a valid sentence and the beginning of sentence could not be delayed to an indefinite date unknown to the court. The trial judge further stated he had lost jurisdiction over the case after the expiration of the term of court in which the petitioner had been convicted. This seems to be contrary to the specification entered under judgment No. 11032. If the trial court had lost jurisdiction after one term of court had expired, then the trial court could not postdate the sentence to an indefinite date. The petitioner al-

leges at the time of judgment and sentence in his case, it was not necessary for the sentencing judge to sign the judgment of the court. The clerk of the court prepared the judgments and it seems there has been an ambiguous construction of the judgment No. 11032. The judgments No. 11032 and No. 11074 were not signed by the sentencing judge, and the clerk entered the specification after marshal's failure to comply with commitments.

XII

The petitioner avers and alleges his sentence began on September 17, 1930 and expired on October 12, 1940. That judgments No. 11032 and No. 11074 were void on October 12, 1940 and the petitioner is being held beyond the statutory period of time regulated by statute. The petitioner is now confined on void judgments and the sentence is in excess of [46] the maximum penalty that could be imposed under (313, 315, 88 and 408 of the Code of laws of the United States.

SUMMARY OF ARGUMENT

The petitioner makes three points in his argument. First, the petitioner was entitled to have his Federal sentence first executed, having been first indicted by Federal Authorities the jurisdiction of criminal case No. 11032, and No. 11074 falls within the ratio of *Albort v. U. S. (C. C. A. Cal 1933)* 67 F. (2d) 4. The Court first acquiring jurisdiction is entitled to prosecute and satisfy its

judgment to the end before surrendering the petitioner to another court. The petitioner asserts the Federal Court did not have power to give the judgment it did. The Federal Court did not have authority to sentence beyond its jurisdiction and to exceed the maximum penalty regulated by statute. The jurisdictional question arises after the Federal Court failed to prosecute case No. 11032 and No. 11074. The Federal Court having waived their rights to a foreign sovereignty, was without jurisdiction to sentence beyond the statute. The Federal Court could not take the petitioner from a foreign sovereignty and pass a valid judgment of conviction to start upon the expiration of an indefinite sentence imposed by the foreign sovereignty. The sentence imposed by the State Court was an indeterminate sentence and did not have an expiration date. Therefore the Federal Court could not sentence to exceed the maximum penalty regulated by Statute. Second, the petitioner was entitled to time served from the date of commitment as provided for by the date of the sentence as shown by the judgments, this falls within the ration of in re Jennings, (C. C. MO. 1902) 118F-31 P. 479, 482. In re Jennings, Supra, the Court said: "Where a marshal failed to obey the judgment of a federal court directing him to convey a prisoner to the penitentiary, and deliver him to the keeper to serve a term of imprisonment, in execution of the sentence imposed by such [47] judgment, but, in violation of his duty, delivered the prisoner to the marshal of

another district, where he was tried, sentenced, and imprisoned for a different offense, the term of imprisonment under the first sentence must be computed from the date of such sentence, when it would have commenced had the marshal performed his duty, it not being within the power of a ministerial officer, by any action of his, to suspend the operation of the sentence of a court to as to prevent it from expiring by lapse of time; and, under such circumstances, it must be presumed, in favor of the prisoner, that he would have earned the good time allowed him by law for good conduct. *Id.* In *re Jennings*, *Supra*. Third, the petitioner asserts he is being twice punished for the same offense, this falls within the Fifth Amendment of the Constitution of the United States. The Fifth Amendment provides in part, * * * "Nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb * * *". The petitioner asserts double jeopardy attaches after satisfying the judgments No. 11032 and No. 11074 by service of ten years and twenty five days from date of final judgment. The petitioner asserts he was convicted and sentenced on September 17, 1930 for violation of Section 313, 315, 88, and 408 of Title 18 U.S.C. The maximum punishment that could be imposed under the section violated totaled fifteen years. The petitioner asserts he has served over eleven years from date of commitments and judgments as shown by petitioner's "exhibits A and B, respectively." The sentence imposed by the court is in excess of

what could have been imposed under the sections that were violated. The petitioner is now being punished the second time for the same offense. [48]

ARGUMENT

I

A. The petitioner states he was first indicted by the federal gov't and was entitled to have the federal sentence first executed. See petitioner's "exhibits A and B, respectively" for reference as against State proceedings. See, also petitioner's "exhibit D" for reference of State indictment being returned at the July term of Court. The petitioner states, "Federal Court, having first taken jurisdiction of criminal case, was entitled as against State Court subsequently acquiring jurisdiction to have its sentence first executed." *Id.*

Albori v. U. S. (C. A. A. Cal. 1933) 67 F. (2) 4.

The petitioner states the Federal Court had the petitioner in their custody and should have retained jurisdiction over the petitioner until the case was prosecuted and the judgment satisfied. The Federal and State Court do not exercise concurrent jurisdiction, unless the crime is punishable under both State and Federal Statute. The Federal offenses charged in case No. 11032 and No. 11074, was not punishable under State Statutes, and the State offense charged in case No. 239 was not punishable under Federal Statute. Therefore the State and Federal could not exercise concurrent jurisdiction, and the Court first acquiring criminal jurisdiction should satisfy its judgment to the end.

The case of *Albori v. U. S. Supra*, controls the case of the petitioner's in respect to the jurisdiction of the Federal Court to prosecute case No. 11032 and No. 11074, before surrendering of the petitioner to State Authorities. The petitioner's plea of jurisdiction is to point out the facts concerning the post-dating of the Federal sentence. Had the Federal Court prosecuted case No. 11032 and No. 11074 and [49] satisfied the judgment thereunder before surrendering the petitioner to State authorities, there would have been no conflict of the State and Federal sentence. The case of *Albori v. U. S., Supra*, is directly in point with the petitioner's case.

II

A. The petitioner states he was sentenced on September 17, 1930, to terms totaling fifteen years. The judgments and commitments No. 11032 and 11074 provides the date of September 17, 1930. The petitioner states the judgment is the sentence of the Court.

Berman vs. United States, U. S.—, 82—, L. ed.—, 58 S. Ct. 164.

II-B. The petitioner states he was sentenced in the absence of statute and was committed to the discretion of the court. That no statute controlled the beginning of the sentence and therefore the sentence must have expression for the sentence is the judgment.

Miller v. Aderhold, 288 U. S. 206, 210, 77 L. Ed. 702, 705, 53 S. Ct. 325;

Wagner v. U. S. (C.C.A. 9th) 3 F. (2d) 864; Hill v. U. S. 298, U. S. 460, 464, 80 L. ed. 1283, 56 S. Ct. 760.

The petitioner states the sentence of September 17, 1930 is the judgment of the Court. The judgment provides for the date of Sept. 17, 1930, therefore the judgment is the sentence. Berman v. United States, *Supra*.

III

A. The petitioner states the measure of punishment is generally set forth in the statute creating and defining the offense. The sentence should be couched in direct, clear, and unambiguous language, admitting of no uncertainty in any of its terms. [50]

U. S. v. Daugherty, 299 U. S. 326, 70 L. ed. 309, 46 St. Ct. 156;

U. S. v. Patterson, 29 F. 775

The petitioner states the words "from date of delivery to the said penitentiary" are ambiguous, as nine years one month and thirteen days elapsed before the petitioner was actually delivered into the custody of the Warden. The petitioner further contends the specification inserted under judgment No. 11032 provides no date, and is silent to the date of October 31, 1939. Therefore the case of U. S. v. Daugherty, *Supra*, controls the sentence imposed in Case No. 11032. The case of U. S. v. Patterson, *supra*, is also controlling here in this case. The part of the judgment the trial court refers to as the date when sentence is to begin, contains no date and

contradicts the commitment. The ambiguous construction of the judgment imparts verity when collaterally assailed. Ibid. The judgment of the court contains the date of September 17, 1930, and regardless of the date of delivery the date of judgment is spoken on pronouncement of sentence, and can not be changed by provisions that are uncertain. "In any collateral inquiry, a court will close its ears to a suggestion that the sentence entered in the minutes is something other than the authentic expression of the sentence of the judge." The petitioner states if this court will closely scrutinize the judgment it will clearly show the date of September 17, 1930. The judgment will further disclose there were no provisions made for the date of October 31, 1939. The specification was entered by Clerk of the Court after petitioner had left the court room. And even if the said specification was ruled as the judges instruction, it would still be contrary to the Supreme Court's decision in the (Daugherty case). The petitioner's State sentence did not have a definite release date, therefore Federal Court could not postpone the beginn- [51] ing of the sentence to an indefinite date unknown to the court. In the petitioner's case the Federal judge postdated the valid sentence of conviction through twenty-seven terms of court. This seems to overrule the Supreme Court's opinion in the (Daugherty case), it would also overrule the decision in *U. S. v. Patterson, Supra*. In *U. S. v. Daugherty, Supra*; and *U. S. v. Patterson, Supra*, the Court

said "The sentence must be couched in a direct, clear and unambiguous language, admitting of no uncertainty in any of its terms." This would seem to control the petitioner's sentence, and to be held otherwise would be over-ruling the Supreme Court.

U. S. v. Daugherty, *Supra*

U. S. vs. Patterson, *Supra*

III.

B. The petitioner states the time of one's sentence begins to run from the date he is received by the Warden of the penitentiary, or from the time he is sentenced as shown by the date of such judgment. See, IV Edition, Atwell Fed. Cr. Laws, P. 174.

Ex parte Lyman, 247 Fed. 611

In Ex parte Lyman, *Supra*, the court said: "Unless specific provisions are made for a sentence to start at the expiration of a former sentence the sentences will run concurrently. The petitioner states the specification cannot be considered as specific provisions, because the State sentence was an indeterminate sentence, and did not have a definite release date. The State sentence was so indefinite not even the parole board knew what day the petitioner would receive a parole. If the State parole board did not know what date the petitioner would be released, then the Federal Judge could not determine a date for the Federal sentence to start. Therefore the petitioner states his sentence started on Sept. 17, 1930 as shown by the judgments [52]

and commitments. The case of *Ex parte Lyman*, *Supra*, is directly in point with the petitioner's case.

The petitioner states the specification inserted by Clerk was not included in sentence passed by judge and is void.

Hill vs. U. S. ex rel. Wampler (PA 1936)
56 S. Ct. 760, 298 U. S. 460, 80 L. ed. 1283

See, §569 and 641 of Title 18 U. S. C. A.

V.

A. The petitioner states the maximum on sentences imposed in Case No. 11032 and No. 11074 have been served and the petitioner is entitled to discharge by Habeas Corpus. The court was without power to impose a sentence to exceed the maximum penalty as provided for by § 313, 315, 88 and 408 of Title 18 U. S. C. The sentence imposed upon the petitioner was not within the power of the court, and petitioner is entitled to relief by Habeas Corpus.

Cardigan v. Biddle, 10 F. (2d) 444.

In *Cardigan v. Biddle*, *supra*, the court said: "Where one seeks discharge from confinement after conviction for an offense upon a petition for Habeas Corpus, the sole question presented are whether petitioner was convicted by a court having jurisdiction of his person and the offense, and whether the sentence pronounced was one within the power of the Court." The petitioner states the Court was without power to impose the sentence it did, and the petitioner is entitled to discharge by Habeas Corpus. *Cardigan v. Biddle*, *Supra*:

Tullidge v. Biddle, (C.C.A. 8th) 4 F. (2d) 897;

Franklin v. Biddle, (C.C.A. 8th) 5 F. (2d) 19;

Knewell v. Egan, 268 U. S. 442, 445, 45 S. Ct. 522, 69 L. ed. 1036. [53]

V.

B. The petitioner states marshal's failure to comply with commitment did not postpone beginning of sentence. See, petitioner's exhibits "E" jail commitment.

Albori v. U. S., C. C. A. Cal 1933) 67 F. (2d) 4.

See, petitioner's "exhibit A and B, respectively" for date of commitment issued by trial court.

The date of commitment was entered into the records of the court and dated on Sept. 17, 1930. The petitioner states that the case of Albori v. U. S., *supra*, is directly in point with the petitioner's case.

V.

C. The petitioner cites the case of Smith v. Swope (C. C. A. Wash. 1937) 91 F. (2d) 260; "Where marshal had custody of sentenced prisoner was ordered to deliver him "forthwith" but held prisoner in county jail and surrendered him to State Authorities, prisoner's service of sentence was deemed to begin at time of commitment and custody thereunder, rather than at a date of actual commitment after prisoner's parole by State Au-

thorities.” Id See, petitioner’s “exhibits F” for verification of State Parole. The petitioner states the case of *Smith v. Swope*, *Supra*, is direct in point and controls the petitioner’s case. The petitioner was in custody of marshal before and after sentence was imposed and service of sentence started at time of commitment and custody thereunder. *Smith v. Swope*, *Supra*. See petitioner’s exhibit “E” as reference of being held in county jail.

VI.

A. The petitioner states Federal Court has no authority to suspend indefinitely a valid sentence of conviction and imprisonment.

Campbell v. Aderhold, (D. C. 1929) 36 F. (2d) 366.

Suspension of sentence which is not a probation is void. See § 724 18 USCA. [54]

Hodges v. U. S. (C. C. A. OKLA. 1929) 35 F. (2d) 594.

VII.

A. The petitioner states place of confinement is not part of sentence, therefore the words inserted into body of judgment * * * “from date of delivery to the keeper or Warden of the said penitentiary” * * *, does not provide a date therein for the beginning of sentence on October 31, 1939, and place of confinement is not an important factor inserted into body of judgment.

Cox v. McConnell (C. C. A. Ga. 1935) 80 F. (2d) 258.

VIII.

A. The petitioner states warrant of commitment being final process for carrying judgment into effect is predicated upon the judgment, must be in substantial accord therewith, and cannot vary or contradict the judgment.

Singstack v. Hill, (D. C. Pa. 1936) 16 F. supp. 61.

VIII.

B. The petitioner now directs the court's attention to petitioner's "exhibits A" in reference to the specification inserted under judgment No. 11032, and kindly asks the court to compare the judgment No. 11032 with the commitment No. 11032. The Court will notice the commitment No. 11032 does not provide the specification, and marshal's failure to comply with the commitment cannot be based upon the specifications under the judgment. The petitioner directs the Court's attention to..... judgment No. 11074 in petitioner's "exhibits B" it does not provide a specification and judgment No. 11074 is in substantial accord with the commitment, No. 11074. The sentence imposed in case No. 11074 was ordered to run consecutively with the sentence in case No. 11032. In view of the fact that the sentence imposed in case No. 11074 was imposed after the sentence in case No. 11032, and said judgment No. 11074 did not provide a *speci-* against the [55] petitioner, the sentence would start to run on September 17, 1930. In case No. 11074 no provisions were made for the date of.....

delivery and no specification interrupts the commencement of the sentence, therefore the sentence started the day it was imposed. The petitioner states the sentence was aggregated in both cases and the sentence imposed in case No. 11074 was last imposed, therefore the aggregation was based upon the sentence imposed in case No. 11074. The five years sentence imposed in case No. 11074 would control the sentence in case No. 11032 on aggregation. On aggregation the sentence would start from the date as provided for in the judgment and commitment. The only date in case No. 11074 is of September 17, 1930, and the petitioner directs the courts attention to case No. 11074 to observe the *the* date of judgment and commitment. Therefore the petitioner would be entitled to have the credit for the time served from date of commitment on September 17, 1930. Of course the petitioner could not support the plea until he had entered upon service of the sentence. But after the petitioner had reached the Penitentiary and had been confined therein, the term of his imprisonment would be estimated to begin from the date of sentence. The petitioner states there is not a case in the history of the Federal Courts that can be used to support the trial court's contentions. The trial court imposed judgment and sentence in the absence of statute and the judgment of the court was a final judgment, therefore the sentence would start to run from the date of judgment. To be held otherwise would establish a law, then, not authorized by Con-

gress. It would be over-ruling the appellate court's decisions in various cases, and would be contrary to the Supreme Court's opinions in cases cited herein. The trial court's attempt to make the petitioner serve nineteen years, [56] two months and twelve days on a fifteen year sentence is not within the meaning of law, and is in contravention of § 313, 315, 88 and 408 of the Code of laws of the United States.

IX.

A. The petitioner states in the case of *Rohr v. Hudspeth*, 105 F. (2d) 747, "The petitioner Armond J. Rohr was not under State sentence at the time of his conviction by the Federal District Court. In the (Rohr case) the delay of delivery to the Federal Penitentiary was due to State Court proceedings. In the (Rohr Case) The Federal court convicted the petitioner and surrendered the petitioner to State Authorities for trial. The State Authorities failed to obtain a conviction in the (Rohr case) and left the State indictment to be reinsated. The State Authorities turned the petitioner Rohr back to Federal Authorities and the delivery in the (Rohr case) was on January 16, 1936. In the (Rohr case) four months and two days elapsed before the petitioner was delivered to the Penitentiary." The petitioner directs the Court's attention to the (Rohr case) in which Justice Lewis, speaking for the court said: (3) "A different situation might be presented if the marshal had had exclusive custody on the date of sen-

tence, had failed to carry out the judgment and orders of the Federal Court, and had surrendered him to the State authorities. See *Smith v. Swope*, 9 Cir. 91 F. (2d) 260". In the petitioner's case the Federal marshal had exclusive custody on the date of sentence and held petitioner in county jail before surrendering petitioner to State authorities. The marshal failed to execute commitment, and therefore petitioner's sentence started from time of commitment and custody thereunder, rather than at date of actual commitment after petitioner was paroled by State authorities. *Smith v. Swope*, *Supra*. See *Rohr v. Hudspeth*, [57] 105 F. (2d) 747, 750. See also petitioner's exhibits "E" jail commitment, and petitioner's "exhibit F" of State Parole, and petitioner's "exhibits A and B" for date of commitment issued by District Court. The case of *Smith v. Swope*, *Supra*, would control the case of petitioner's, and to be considered otherwise would be overruling the Circuit Court's opinion in the (*Smith Case*). *Smith v. Swope*, *Supra*.

X.

A. The petitioner states in *Zerbst v. McPike*, 5 Cir. 97 F. (2d) 253, "The Federal Court convicted McPike and passed sentence, and State Authorities returned McPike to jail to await trial and convicted and sentenced McPike to a State Prison. In the (*McPike*) case the Louisiana officers delivered McPike to the United States Court (District) for trial. He was sentenced to three years, with

no time fixed for commencement, was imposed. The State Authorities returned McPike to jail and he was convicted on a State charge and sentenced to three to five years in the State Penitentiary. Upon discharge from the State Penitentiary McPike was committed to the Federal Penitentiary. Upon petition for Writ of habeas corpus McPike obtained a judgment of discharge, which was reversed on appeal. The court held that McPike's federal sentence had not expired upon his release from the States Penitentiary, because under the statute his federal sentence would begin to run only from the date on which he was received at the Federal Penitentiary. When he was returned to the jail by the State officers it was to await trial in the State Court and not to await transportation to the federal penitentiary. Here in the petitioner's case a different situation is presented, where the petitioner was undergoing a State sentence prior to the trial date of September 17, 1930. The petitioner was convicted by a State [58] Court and sentenced to a term of not less than one year and no more than natural life. Fifty-two days after the petitioner was incarcerated in the State Penitentiary under a sentence of one to life, the federal authorities arrested the petitioner and confined him in the Vermilion County Jail, See petitioner's exhibits "E", jail commitment. The petitioner had been incarcerated in the State Penitentiary July 25, 1930, and on Sept. 14, 1930, the federal authorities arrested petitioner and confined him in the Vermilion County

Jail to await trial on charges No. 11032 and No. 11074. On arraignment, petitioner pleaded not guilty to charges No. 11032 & 11074, on September 16, 1930. Petitioner states the trial date was set for Sept. 17, 1930, and petitioner was convicted in case No. 11032. The petitioner withdrew his plea of not guilty in case No. 11074, and the court immediately passed sentence in both cases. The petitioner states after he received sentence on Sept. 17, 1930, he was confined in the Vermilion County Jail. That on Sept. 18, 1930, the marshal surrendered the petitioner back to state prison authorities. The marshal failed to execute writ of commitments, to carry judgments No. 11032 and 11074 into effect. Here in the petitioner's case is the same question of law that was settled in *Smith v. Swope*, *Supra*. In the *Smith* case, the Marshal failed to comply with commitment and the court held that the sentence started at time of commitment and custody thereunder, rather than at a date of parole by State authorities. Here in petitioner's case is the same question, and the clerk of court attempted to stop the valid judgment of conviction by inserting a specification under the original judgment of the court. The specification was entered after the marshal failed to carry judgment into effect. The petitioner states his sentence started on Sept. 17, 1930 as shown by the commitments and judgments, *Ex parte Lyman*, 247 Fed. 611. Petitioner further states his term of [59] imprisonment started from date of commitment and custody there-

under, rather than at a date of parole by State authorities. *Smith v. Swope*, *supra*; The case of *Smith v. Swope*, is direct in point with the petitioner's case and has controlling effect to time when sentence began to run. *Smith v. Swope*, *supra*.

XI.

A. The petitioner cites the case in *re Jennings*, (C. C. Mo. 1902) 118 F.-31, 479, 482. "Where an execution of sentence has not been stayed by an appeal, the term of imprisonment given by such sentence should be computed from the date of sentence, and it must be presumed in favor of the prisoner that he would have earned his allowance of time for good behavior given by this section, as it is not material that during a portion of the time during which the prisoner has been confined, he was held ostensibly for an offense other than that for which he was originally convicted, since in the eye of the law, he has all the time been serving out the sentence that was imposed upon him. "Id. In *re Jennings*, *Supra*; "The petitioner had been sentenced by a federal court to five years imprisonment in a penitentiary, in Kansas. The marshal, instead of conveying him there, surrendered him to the marshal of another district, where he was tried for another crime, convicted, and sentenced for life. He was imprisoned in Ohio. Five years later he was pardoned for this second offense. Held that he had served his first sentence by his term of imprisonment in Ohio." *Id*.

The petitioner states the case in re Jennings, Supra, is not only controlling here but it is in parallel with the petitioner's case. In the (Jennings case) the appellate court held the federal sentence was served by his imprisonment in the State Penitentiary. Here in the case of the petitioner's is a question on law that was settled in the (Jennings case) [60] many years ago. Here in the petitioner's case is a question of law that falls within the ratio of "Public 170 Act of Congress 1902". This Act (supra) did not provide for the beginning of a sentence imposed by the district courts. The petitioner was sentenced in the absence of statute and the court could not suspend indefinitely a valid sentence. See section 724—18 U.S.C.A.—here the petitioner was sentenced to a State Prison on a sentence so indefinite not even the Parole Board knew what date the petitioner would be released. The (Jennings case) was of the same nature and there a pardon was granted, and the appellate court held the Federal sentence was served by the service of years spent in the Ohio State Prison. Here the petitioner was paroled on his State sentence, and was taken into custody by Federal authorities (marshal) on judgments and commitments dated on September 17, 1930. Here the petitioner was forced to start his sentence on October 31, 1939, and was not given credit for time served from date of judgment. The circuit court ruled in the (Jennings case) he had served his federal sentence while incarcerated in the Ohio

State Penitentiary. Here in the petitioner's case is the same question of law, direct in point with the (Jennings case) and to be considered otherwise would be overruling the Circuit Court's decision handed down in the (Jennings case). This case was in the absence of statute, so was the petitioner's case in the absence of statute, there in the (Jennings case) the marshal failed to comply with the commitment, here in petitioner's case the marshal failed to comply with the commitment, and the circuit court held in the (Jennings case) marshal's failure to comply with commitment did not postpone beginning of sentence. There in the (Jennings case) the court said, "the law comtemplates that, after a prisoner has been [61] tried and sentenced, he will be committed at once to the custody of the prison officials where the sentence is to be executed. He passes by virtue of the sentence into a custody different from that of the court before which he was convicted. Here in the petitioner's case is the same question of law that was settled in the (Jennings case) and the petitioner states he passed by virtue of the sentence into a custody different from that of the court before which he was convicted. There in the (Jennings case) the court held the sentence was served by the number of years spent in the Ohio State Penitentiary. Here in the petitioner's case is the same question that effects the sentence imposed by a District Court, and that here in the case of the petitioner's is the same laws that were in effect when the (Jennings case) was decided. The petitioner states the (Jen-

nings case was tried prior to Public 170, 1902; and in 1902 Congress passed a law known as Public 170 effecting prisoners sentenced prior to its enactment. The petitioner states that at the time of his conviction and sentence the law of 1902 was still in effect. The Act of Congress, Public 170, 1902, had been amended several times, but the amendments did not destroy the law which controlled the allowance of good time as provided therein. The petitioner states the law under which he was convicted did not have a statute providing for the commencement of a sentence of imprisonment. The petitioner was sentenced in the absence of statute and the trial court was without power to sentence beyond its jurisdiction. The trial court could not contend that the judgment entered upon its record was something other than the sentence of the court. The sentence of September 17, 1930, was not stayed by an appeal, and after sentence was imposed the petitioner passed into a custody other than the court. In re Jennings, Supra. [62]

XII

A. The petitioner states in the case of the petitioner's the Federal and State Court could not form a union to loan and parole the petitioner back and forth as they should see fit. The petitioner states the Federal has *arraigned* the petitioner's sentence so the petitioner will be eligible for conditional release on November 25, 1949. The petitioner was sentenced prior to the conditional release law, and is not subject to the laws passed (June 29, 1932,

C. 310 §3, 47 Stat. 381). The records of the respondent shows that the petitioner was sentenced to the United States Penitentiary, Leavenworth, Kansas, on September 17, 1930. The records of the respondent further shows the petitioner will receive a conditional release on Nov. 25, 1949. The petitioner states the records of the respondent further shows the petitioner will be subject to discharge on October 31, 1954. Petitioner states he was sentenced prior to the conditional release law and is subject to discharge after service of ten years and twenty five days from date of final judgment entered upon the records of the court. In re Jennings, *supra*. The petitioner is not subject to conditional release, see *Henratty v. Zerbst* (D.C. Kan. 1934) 9 F. Supp. 230, appeal *dism.* (C.C.A. 1935) 77 F. (2d) 1023; *U. S. ex rel. Anderson v. Anderson* (C.C.A. Min. 1935) 76 F. (2d) 375, *aff* (D.C. 1934) 8 F. Supp. 812. The petitioner states the respondent received the petitioner on a commitment and judgment dated Sept. 17, 1930. The respondent has no authority to start a sentence, and the marshal's return cannot be considered the date when sentence started to run. See in re Jennings, *Supra*. [63]

XIII

A. The petitioner states after the expiration of the term of court in which he was convicted the trial court had no further control over the valid judgment or sentence which it had rendered, and cannot vacate, reform, or change it or pronounce a new sentence.

Ex parte Friday, 43 Fed. 916; U.S. v. Malone, 9 Federal, 897;

U.S. v. Pile, 130 U.S., 280; U.S. v. Patterson, 29 Fed. 775.

The trial court declared the sentence of September 17, 1930, a valid judgment and could not post-date the sentence to a date unknown to the court. The State prison sentence was so indefinite the parole board did not know what date the petitioner would be paroled. Therefore the petitioner concludes the sentence of Sept. 17, 1930 is the judgment of the court. The judgments and commitments provides for the date of Sept. 17, 1930, and the judgment is the sentence of the Court. *Berman v. United States*, *Supra*.

The court cannot vacate, reform or change the date of judgment or pronounce a new sentence. Ex parte Friday, *supra*, U.S. v. Malone, *Supra*, U.S. v. Pile, *supra*.

XIII

B. The petitioner states in the case of *Stevens v. McClaughry*, 207 Fed. 18, Circuit Judge Sanborn for the court of appeals for the eighth circuit, held that one who is being restrained of his liberty for many years by virtue of the judgment of a Federal Court which is beyond its jurisdiction and void, is not barred from a release therefrom by a writ of habeas corpus by the fact that he might have secured relief by a writ of error but failed to apply for it until it was too late. An habeas corpus may be used to liberate one who is being restrained of

his liberty by virtue of the judgment of [64] the Federal Court beyond its jurisdiction and therefore void. *Stevens v. McCloughry*, 207 Fed. 18.

The petitioner states he is being held on judgments that were void on October 12, 1940 and he is entitled to discharge by habeas corpus. *Stevens v. McCloughry*, *supra*. The petitioner states he was notified by the trial court that the sentence had begun and therefore forfeited his rights for an appeal. The petitioner states he was under a State sentence at the time Federal sentence was imposed, and if the Federal sentence was in operation while the petitioner was serving his state sentence it would not be necessary to appeal the conviction. Therefore the sentence of Sept. 17, 1930, is void and the petitioner is entitled to release by habeas corpus. *Stevens v. McCloughry*, *supra*, See IV Edition, *Atwell Fed. Cr. Lars* § 34 A. P. 179, 180.

XIII

C. The petitioner states that twenty seven terms of court expired before the marshal executed writ of commitment. The trial court could not reform, or change it or pronounce a new sentence. *U.S. v. Malone*, *Supra*; *Ex parte Friday*, *supra*; *U.S. v. Pile*, *supra*; *U.S. v. Patterson*, *Supra*. The court could not declare the valid sentence of conviction to start at a date unknown to the court. The trial Court declared the judgment of Sept. 17, 1930, a valid sentence and could not postpone the sentence through twenty seven terms of court. The trial court did not hesitate in passing of judgment and

sentence and after the sentence had begun to run, the trial court could not stop the sentence after the term of court had expired in which the petitioner was convicted. The specification inserted under the judgment by the clerk of the Court would not stop a valid judgment or sentence. And even if such a specification was ordered by the trial judge, the [65] date provided in the body of the judgment would control the sentence. The specification consists of words without expression which does not provide a date, and the commitment is silent to the said specification. Therefore the specification would not control the sentence as it is to uncertain. *U.S. v. Daugherty, supra*; *U.S. v. Patterson, Supra*. The specifications shows the Federal sentence shall begin upon the expiration of the sentence the petitioner was serving in the Southern Illinois State Penitentiary. The State sentence did not have an expiration date and has not as yet expired. The trial court could not direct the sentence of Sept. 17, 1930 to start upon the expiration of the State sentence, as the State sentence did not have an expiration date. The trial court did not have power to postdate the valid judgment through twenty seven terms of court. The petitioner states the time when sentence begun under judgment No. 11032 and No. 11074, was on September 17, 1930, as shown by the date therein. If the sentence of Sept. 17, 1930 is not the sentence of the court as shown by the date of the judgment, the judgment would have been void for want of power to sentence.

XIV

A. The petitioner states he has satisfied judgments No. 11032 and No. 11074, and is being held in violation of the Fifth Amendment of the Constitution of the United States. The petitioner states his plea of double jeopardy is not based on being twice convicted for the same offense, or the jurisdiction of the trial court to prosecute the offense, but the question presented is the trial court was without power to pass the sentence it did. Petitioner states the trial court was without authority to impose the sentence, and habeas corpus lies to inquire into the judgment and sentence under which the petitioner is held. In the case [66] of *Ex parte Lang*, 18 Wall. 163, 21 L.Ed. 872, the court said: "It was not a question as the Court's power to hear and determine the case, it was held the court was without power to give the judgment it did. Here in the case of the petitioner's is the same question of the Court's power to sentence the petitioner in excess of what could be imposed under § 313, 315, 88 and 408 of Title 18, U.S.C. The Court did not have power to sentence the petitioner to exceed the maximum penalty that could have been given under the Statutes that were violated. The judgments of the court provided the date of September 17, 1930, and are now void. The petitioner states the trial court was without power to give the judgment it did. *Ex parte Lang*, *Supra*. The Fifth Amendment of the Constitution, provides, * * * "Nor shall any person be subject for the same offense to

be twice put in jeopardy of life or limb * * *". In *re Coy*, 127 U.S. 731, 758, 8 St.Ct. 1263, 32 L.Ed. 274, that the power of Congress to pass a statute under which a prisoner is held in custody may be inquired under a writ of habeas corpus as affecting the jurisdiction of the court which ordered his imprisonment; and the court speaking by Mr. Justice Miller, adds: "And if their want of power appears on the face of the record of his condemnation, whether in the indictment or elsewhere, the court which has authority to issue the Writ is bound to release him. The petitioner states the want of power is based upon the court's own judgment, and to hold the petitioner on a sentence that is in excess of the maximum that could be imposed under statute, constitutes double jeopardy. The petitioner states the want of power appears on the face of the judgments, No. 11032 and 11074 and the petitioner is entitled to discharge by Habeas Corpus. In *re Coy*, *supra*. The petitioner states the court was without authority to give the judgment it did, *Ex parte Nielsen*, 131 U.S. 176, 9 St. Ct. 672, 33 L.Ed. 118, and cases therein cited. III Edition Mikell Cr. [67] Law and Proc. Ch. 14 Page 290, 291, 292.

CONCLUSIONS OF LAW

1. The petitioner is being held beyond the maximum penalty regulated by statute. The sentence imposed upon the petitioner was not within the power of the court.

2. The petitioner is held on judgments that were void on October 12, 1940. The sentence of Sept. 17, 1930, is the judgment of the court and the date of Sept. 17, 1930 is provided in the body of the judgment.

3. The date of October 31, 1939 cannot be considered the date when sentence began, as no provisions were made for this date.

4. The specification inserted under judgment No. 11032 is contrary to order of commitment. The specification provides, the Federal sentence shall begin upon the expiration of the State sentence and the State sentence has no definite expiration date. The State sentence has not as yet expired and the petitioner will continue upon parole after release from Federal sentence.

5. The petitioner is being twice punished for the same offense and is held a prisoner in violation of the Fifth Amendment of the U.S. Constitution.

The petitioner is illegally and unlawfully restrained of his liberty, prays that a writ of Habeas Corpus issue, directed to the respondent herein named, to bring and have your petitioner before Your Honor, instanter, together with the true cause of his detention, to the end that due inquiry may be had, and that Your Honor may proceed in a summary way to determine the facts in this case and the legality of the imprisonment of the said petitioner, restraint, and detention, and further, that an order issue from under the seal of Your Honor, discharging your petitioner from further [68] ille-

gal an unlawful restraint and detention, and your petitioner will ever pray.

Respectfully Submitted,
(Signed) CECIL WRIGHT,
Petitioner.

State of California,
County of San Francisco—ss.

Personally appeared before me, Cecil Wright, who, being duly sworn, deposes and says he has read the foregoing attached petition and he knows the contents thereof, and the allegations therein set forth are true except as to such matters as are stated upon information and belief, and these he verily believes to be true, and that he is entitled to the relief therein sought.

(Signed) CECIL WRIGHT,
Petitioner-Affiant.

Subscribed and sworn to before me this 23 day of December A.D. 1941.

(Signed) E. J. MILLER,
Associate Warden, U. S. Pen-
[Seal] itentiary, Alcatraz, California.

Warden-Associate Warden authorized by the Act of February 11, 1938, to administer oaths.

Filed in the District Court:

.....A.D. 1941.....

579 "EXHIBIT D" DEC—6 Rec'd R.R.B.

State of Illinois,
Clark County—ss.

At a regular Term of the Clark County Circuit Court, begun and holden at the Courthouse, in the City of Marshall, in and for the County of Clark, on Monday, the 14th day of July, A.D. 1930, and on the sixth day of said Term, being the 25th day of July A.D.: 1930.

Present—Hon. S. Murray Clark, Judge.

Russell L. Riley, Clerk.

Victor C. Miller, State Attorney.

Harry O. Coldren, Sheriff.

Attest..... Clerk

PETITIONER'S "EXHIBITS D."

239

ROBBERY

THE PEOPLOE vs. ROBERT RAYMOND,
MARK BOWLES, CECIL WRIGHT,
MONTE CHRISTE and JOSEPH HART-
MAN.

(The paragraph concerning Cecil Wright is
as Follows)

And now again on this day comes the People of the State of Illinois by Victor C. Miller State's Attorney and the said Defendant Cecil Wright in

his own proper person as well as by his Attorney Grendel F. Bennett also comes and issues being joined it is the order of the Court that a jury come Whereupon come the jurors of a jury of Twelve good and lawful men, to-wit: R. M. Bennet, Newton Brosman, J. B. Young, Raymond Lindley, Ed Cunningham, Fred McFarland, Bird Thompson, Marion Bartman, Cabot Hill, Wl. Ellington, B. F. Setzer and Wm. Cline who being duly selected, tried and sworn proceed to try said cause and the jury having heard the opening statements, all the evidence adduced [70] the argument of counsel together with the instructions of the Court, retire in charge of a sworn officer to consider of their verdict, and now comes again the Jury in open Court and for their verdict say: We the Jury find the defendant Cecil Wright guilty of Robbery in manner and form as charged in the indictment and we further find from the evidence that at the time of the commission of said robbery the defendant was armed with a dangerous weapon, to-wit: with a colts 45 Automatic.

And we further find from the evidence that the said defendant, Cecil (Tuck) Wright is about the age of twenty four (24) years.

And now comes the defendant, Cecil Wright, into open Court by his counsel Grendel F. Bennett as well as in his own proper person and makes motion for a new trial and the Court being fully advised in the premises it is the Order of the Court motion for a new trial be overruled and denied and now comes again the defendant Cecil Wright by his

counsel and makes motion in arrest of Judgment and it is the Order of the Court motion be denied and Defendant thereupon excepts.

Now again on this day come the said People of the State of Illinois, by Victor C. Miller, State's Attorney and the said Defendant, Cecil Wright in his own proper person, as well as by his counsel, Grendel F. Bennett, also come and now neither the said defendant, Cecil Wright, nor Grendel F. Bennett, his counsel for him, saying anything further why the Judgment of the Court should not now be pronounced against him on the verdict of guilty of Robbery in manner and form as charged in the Indictment heretofore rendered in this cause. [71]

Therefore, it is Ordered and adjudged by the Court, that the said defendant, Cecil Wright, be taken from the Bar of this Court to the Common jail of Clark County, from whence he came, and from thence by the Sheriff of said County, to the Penitentiary, of this State at Menard, Illinois and be delivered to the Warden or Keeper of said Penitentiary, and the said Warden or Keeper is hereby required and commanded to take the body of said defendant Cecil Wright and confine him in said Penitentiary in safe and secure custody, or on parole, from and after delivery hereof and until discharged by the Department of Public Welfare as authorized and directed by law, provided such term of imprisonment shall not exceed the maximum term nor less than the minimum term provided by law for the crime for which said defendant was

convicted and sentenced, making allowance for good time as provided by law.

It is further Ordered and Adjudged that the said Defendant pay 1/5 of the costs of this prosecution, and that fee bills be issues therefor.

CERTIFICATE

State of Illinois,
County of Clark—ss.

I, Ray Burkybile, Clerk of the Circuit Court and Ex-Officio Recorder in and for said County, in the State aforesaid, do hereby certify that I am the keeper of the records, files and seal of said Court, and that said Court is a court of record, having a duly elected, qualified and acting Clerk and a seal; said court has original jurisdiction in all matters of law and equity, and as Recorder I am the custodian of the records and files of the Recorder's Office. I do hereby certify that the foregoing is a true and complete [72] copy of Criminal Court Record 4 at page 339 and 340, as the same appears from the records and files now in this office remaining.

In Testimony Whereof, I have hereunto set my hand and affixed the Official Seal of said Court, at my office in Marshall, Illinois, this 28 day of November, A.D. 1941.

(Signed)

RAY BIRKYBILE,

[Seal]

Clerk of the Circuit Court.

[73]

PETITIONER'S "EXHIBITS C" AND
"EXHIBITS E".

F. W. Ward

Phones (County House 3700

Sheriff

County Jail 153

Deputies

Merrill J. Wayne

J. P. Ovall, Jr.

J. Ross Prather

R. P. Meade

579

Office of Sheriff

Vermilion County

Danville, Illinois

November 29-1941

Mr. Cecil Wright

#579-P.M.B.

Alcatraz, Calif.

Dear Mr. Wright

Your Letter of November 23-41 Was referred to me by the U.S. District Clerk, Mr. D. H. Reed.

"Exhibits C"—Our Records Show that you were confined in the Ver. Co. Jail From June 19-1930 to July 23-1930.

"Exhibits E"—Our Records Also Show that on Sept. 14th-1930 you were arrested and Was confined here until Sept. 18-1930.

If you wish a Certified copy of Court Records The Clerk's Office will Be Glad to furnish same to you.

Thanking you.

Assure you of our Cooperation.

Sincerely Yours,

(Signed)

R. A. MERLIE,

Jailer, Ver. Co. Jail, Danville,
Ill. [74]

PETITIONER'S "EXHIBIT F."

579

Members of the Division

W. C. Jones, Superintendent

Frank D. Whipp

Milton H. Summers

William J. Smith Jr.

Paul L. Schroeder, M.D.

James G. Gullett, Assistant Superintendent.

George W. Schwaner, Jr., Secretary.

Robert B. Phillips, Chief Clerk.

State of Illinois

Dwight H. Green, Governor

Department of Public Safety

T. P. Sullivan, Director

Division of Correction

Springfield

October 30, 1941.

To: Cecil Wright, #15386-Menard

#579 P.M.B.

Alcatraz, California

In reply to your letter of October 21, would advise that the file in your case discloses that under date of October 9, 1939, the following order was entered in your case:

“Paroled on Mittimi Nos. 4984 and 239. Effective when the Federal authorities come for him. If not taken case to be referred back to the Board.”

The record further shows that under date of October 31, 1939, you were released to the Federal authorities. The effect of this order and the parole is that upon your release from the institution in which you are now serving, you will be placed on parole by the Division of Supervision of Parolees of the State of Illinois.

I would suggest that thirty days prior to your release date that you contact the parole officer at Menard Branch of the Illinois State Penitentiary, advising him of your release date and he will see to it that you are supplied with the necessary documents for your parole period. [75]

Due to your record you will be required to serve a minimum of four years on parole, being a “two time loser.”

Trusting the information given you proves helpful, I am

Very truly yours,

(Signed) ROBERT B. PHILLIPS,
Chief Clerk.

RBP:EC

cc. J. L. Lawder
Parole Officer
Menard

[Endorsed] Filed Jan-8 1942. Walter B. Maling,
Clerk. [76]

CERTIFICATE OF CLERK, U. S. DISTRICT
COURT TO SUPPLEMENTAL RECORD
ON APPEAL

I, Walter B. Maling, Clerk of the District Court of the United States, in and for the Northern District of California, do hereby certify the foregoing 77 pages, numbered from 1 to 77 inclusive, to be a full, true and correct copy of the Petition for Writ of Habeas Corpus in Case No. 23581 S, Cecil Wright, vs. James A. Johnston, and the Petition for Writ of Habeas Corpus, in Case No. 23611 S, Cecil Wright, vs. James A. Johnston, as designated in the Order Granting Motion to Include Additional Documents in Transcript of Record, and as the same remain on file and of record in the office of the Clerk of said Court, and that the same constitute the supplemental record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the cost of the foregoing supplemental transcript of record is \$29.25; that the said amount has been charged against the United States.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court, this 30th day of January, A.D. 1943,

WALTER B. MALING,
Clerk.

By M. E. VAN BUREN,
Deputy Clerk. [77]

[Endorsed]: No. 10331. United States Circuit Court of Appeals for the Ninth Circuit. James A. Johnston, Warden, United States Penitentiary, Alcatraz, California, Appellant, vs. Cecil Wright, Appellee. Supplemental Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed February 2, 1943.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of
Appeals for the Ninth Circuit.

6
No. 10,331

IN THE
United States Circuit Court of Appeals
For the Ninth Circuit

JAMES A. JOHNSTON, Warden, United
States Penitentiary, Alcatraz, Cali-
fornia,

Appellant,

vs.

CECIL WRIGHT,

Appellee.

BRIEF FOR APPELLANT.

FRANK J. HENNESSY,

United States Attorney,

A. J. ZIRPOLI,

Assistant United States Attorney,

Post Office Building, San Francisco,

Attorneys for Appellant.

FILED

MAR 23 1943

PAUL P. O'BRIEN,
CLERK

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No. 10,331

IN THE
United States Circuit Court of Appeals
For the Ninth Circuit

JAMES A. JOHNSTON, Warden, United
States Penitentiary, Alcatraz, Cali-
fornia,

Appellant,

vs.

CECIL WRIGHT,

Appellee.

BRIEF FOR APPELLANT.

JURISDICTIONAL STATEMENT.

This is an appeal from an order of the Honorable William Denman, United States Circuit Judge for the Ninth Judicial Circuit, discharging the appellee from the custody of appellant (T. 208-221 inclusive). Judge William Denman entertained the habeas corpus proceedings under the provisions of Title 28 U. S. C. A., Sections 451 to 461 inclusive.

Jurisdiction to review the order of Judge William Denman discharging appellee from the custody of appellant is conferred upon this Court by Title 28 U. S. C. A., Sections 463 and 225.

FACTS OF THE CASE.

Prior to the filing of the petition for writ of habeas corpus, on which the order of Circuit Judge William Denman (T. 208-221 inclusive) issued, appellee had filed three petitions in the District Court of the United States for the Northern District of California, all of which had been denied. The first was case No. 23581-S (T. 316-364 inclusive), the second was case No. 23611-S (T. 365-408 inclusive), and the third was case No. 23647-S (T. 20-114 inclusive and 226-307 inclusive). In this last case wherein the petition had been dismissed, appellee was granted a hearing on a writ of habeas corpus duly issued by District Judge A. F. St. Sure. The order of District Judge A. F. St. Sure denying the application of appellee to be restored to his liberty and discharging the writ issued by him was made and entered on August 20, 1942 (T. 114), and on September 11, 1942, the Judge made and entered his findings of fact and conclusions of law (T. 226-234 inclusive). The appellee made no effort to appeal from the order of District Judge A. F. St. Sure, but instead filed his present petition for writ of habeas corpus before the Honorable William Denman on or before October 7, 1942, the day on which Judge Denman issued the writ of habeas corpus herein (T. 133-135 inclusive). This was 52 days before the time within which to appeal from the order of District Judge A. F. St. Sure had expired.

Despite this fact, Judge Denman issued the writ, granted appellee a hearing thereon, and then ordered appellee discharged from the custody of appellant.¹

¹The issues involved in this petition, filed before Judge Denman (No. 23744) are identical to those involved in the petition dismissed by Judge St. Sure (No. 23647-S) and from which appellee made no effort to appeal to this Honorable Court. A reading of the petition discloses the appellee is in substance and effect asking Judge Denman, as an individual Circuit Judge, to pass upon the order of Judge St. Sure, a function more appropriately to be exercised by the Circuit Court of Appeals sitting in its appellate capacity.

Judge Denman, however, apparently felt that there were special circumstances present which justified the issuance of the writ by him, for in his opinion he says:

“Prisoner Wright’s petition for a writ of habeas corpus, addressed to me as such circuit judge, leading to a hearing and this decision that he be released from the United States Penitentiary at Alcatraz, California, a penitentiary situated in this circuit, was preceded by his three petitions containing similar allegations, separately addressed to each of the United States District Judges for the Northern District of California. All were denied. Hence is declined the exercise of any discretion to refuse to consider Wright’s present petition, which may be permitted under such decisions as *United States v. Hill*, 71 F. (2d) 159 (CCA-3rd), and *Sweetney v. Johnston*, 121 F. (2d) 445 (CCA-9th).

Wright’s second petition was not heard by the district judge to whom it was addressed. He attempted to appeal from the discharge of the writ in that proceeding, but his appeal was frustrated because his petition to proceed in forma pauperis was denied by the district judge, who decided it against him on the ground Wright’s claims were without merit.

The judge so denying a proceeding forma pauperis, heard the third petition and denied it. Wright, a pauper, concluded it useless again to initiate forma pauperis proceedings before him.

The Government contends that the making of such a second attempt to prosecute an appeal is a condition precedent to his right to have this consideration of his fourth petition. The law places no such limitation on the consideration of the claimed wrongful imprisonment. If there be a discretion to refuse to consider the petition in these circumstances, its exercise is declined. One cannot refuse to consider a petition in which, as developed at the hearing, the merits finally appear

The only facts which appellant deems pertinent to the present appeal are those upon which the order and opinion of Judge Denman (T. 208-22) was predicated.

Judge Denman in ordering the discharge of appellee from the custody of appellant, concluded that appellee is still serving his Illinois (State) sentence and that the Federal sentences of Judge Walter C. Lindley, hereinafter called "the trial Judge", cannot begin to run until the Illinois sentence has terminated for *all purposes*.

so clear, however much the petitioner may have failed to make them clear in the other proceedings." (T. 208-210 inclusive.)

With the above conclusion of Judge Denman, your appellant cannot agree and is still of the opinion that the petition should have been denied and appellee required to petition Judge St. Sure for an order allowing an appeal in forma pauperis to this Honorable Court. That this petition would be denied, it is respectfully submitted, Judge Denman had no right to infer, particularly since this last petition before Judge St. Sure (No. 23674-S) was more complete than appellant's prior petitions and was filed and decided after the Supreme Court decisions in the cases of *Walker v. Johnston*, 312 U. S. 375; *Holiday v. Johnston*, 313 U. S. 342; *Glasser v. United States*, 315 U. S. 60; *Waley v. Johnston*, 316 U. S. 101.

The cases, and particularly the decisions, of the Senior Circuit Judge of this Court clearly indicate that under circumstances similar to those presented in the petition here involved the petitioner's proper remedy is to make application for a writ of habeas corpus to the District Court and if dissatisfied with the order of that Court, to appeal to the Circuit Court of Appeals.

See:

Ex parte Davis, 54 F. (2d) 723;
United States ex rel. Berstein v. Hill, 71 F. (2d) 159;
O'Brien v. Swope, 106 F. (2d) 471;
Whitaker v. Johnston, 85 F. (2d) 199;
Ex parte Haumesch, 82 F. (2d) 588;
Sweetney v. Johnston, 121 F. (2d) 445;

See also:

Paget v. McCauley, 95 F. (2d) 839.

This requires a review of the evidence showing the circumstances of appellee's Illinois imprisonment, Federal convictions and sentences, release from the Illinois penitentiary and commitment to the custody of appellant.

The appellee was sentenced to imprisonment for one year to life for armed robbery (T. 18, 164-166 inclusive) by the State of Illinois, and was on July 26, 1930, committed to the Southern Illinois Penitentiary at Menard, Illinois (T. 141 and 144).

Thereafter appellee was taken from Southern Illinois Penitentiary to the District Court of the United States for the Eastern District of Illinois (the trial Court) on a writ of *habeas corpus ad prosequendum* (T. 268) and thereafter, together with other co-defendants, was tried and convicted before a jury in said Court on September 17, 1930, in case No. 11,032. Following this conviction the trial Court on that day sentenced the defendant as follows:

“* * * it is, therefore considered and adjudged by the Court that the said defendants Robert Raymond, Carl Sanders, Joseph Hartman and *Tuck Wright*, for the offense by them committed in manner and form as charged in the said indictment and as found by the jury in this case each be imprisoned in the United States Penitentiary at Leavenworth, Kansas, for the period of five years on the 1st count of the indictment, three years on the 2nd count and two years on the 3rd count, from the date of delivery of the said defendants to the Keeper or Warden of the said Penitentiary said sentences to run and be served

consecutively; that they each pay a fine to the United States in the sum of Ten Thousand Dollars, that execution issue therefor and that the said defendants stand committed to the said Penitentiary until said fines shall have been fully paid.

It is further ordered by the Court that the sentences herein imposed shall begin upon the expiration of the sentences which the said defendants are now serving *in* the Southern Illinois Penitentiary." (Italics ours.) (T. 126 and 127.)

That this was the sentence then and there imposed is further evidenced from the docket entries (T. 269) and the warrant of commitment (T. 60 and 61).

On the same day that appellee was sentenced as above indicated for violation of the postal laws, he pleaded guilty to the indictment in case No. 11,074, charging a violation of the National Motor Vehicle Theft Act, and was sentenced as follows:

"It is, therefore, considered and adjudged by the Court, that the said defendant Cecil Wright alias Tuck Wright, for the offense by him committed in manner and form as charged in the indictment, and as by him confessed, be imprisoned in the United States Penitentiary at Leavenworth, Kansas, for the period of five years, said sentence to run and be served consecutively with the sentence imposed against the said defendant in case No. 11032, and that said defendant be committed to said Penitentiary pursuant to said sentence." (T. 117 and 119.)

The appellee was then returned to the Southern Illinois Penitentiary until the 31st day of October, 1939, at which time he was released on parole, taken into custody by the United States Marshal and delivered to the United States Penitentiary at Leavenworth, Kansas (T. 127).

While appellee was in the Southern Illinois Penitentiary the following correspondence took place between the Warden of the Illinois State Penitentiary at Menard, Illinois, and W. T. Hammack, Acting Director of the Bureau of Prisons of the Department of Justice of the United States of America. On October 6, 1939, Mr. Hammack wrote to the Warden of the Illinois State Penitentiary as follows:

“We have a letter from your inmate Cecil L. Wright, No. 15386, dated September 3, 1939, addressed to the United States Attorney General, stating that he is serving a state sentence of from one year to life imposed on July 26, 1930; that on September 17, 1930, he was sentenced in the Federal District Court for the Eastern District of Illinois to a total of fifteen years imprisonment, ordered to begin upon expiration of service under the state sentence. He states that a Federal detainer has been filed against him at the Illinois State Penitentiary for the purpose of taking him into custody upon his release from state imprisonment and he advises that he could secure release on parole provided this detainer were removed.

From this letter it appears that the State Parole Board will not grant him a release while this detainer is on file.

There is no authority by which the detainer in question can be removed because it is the only insurance that the United States Marshal at East St. Louis, Illinois, who holds the commitment papers under the Federal sentence, will be informed by you of the date of Wright's release. It is not clear why the Federal detainer is regarded as a bar by the State Parole Board to the prisoner's release on parole. *If such release were ordered by the Board, the detainer would induce you to promptly notify the United States Marshal, who would call at your institution and take Wright into custody for service of his Federal sentence.*

Will you please advise the inmate of this reply to his letter." (Italics ours.) (T. 141-142.)

To this letter the Warden replied as follows on October 12, 1939:

"This has reference to your letter of October 6th relative to Cecil L. Wright, Register No. 15386, an inmate confined in this institution.

I wish to advise you that contrary to the statement made in his letter to you, the fact that he does have a detainer on him will be an important factor in his being given a parole much sooner than if he had no 'Hold' on him by the Department of Justice, and the Parole Board will take this into consideration when his case is reheard.

Your department will be advised thirty days prior to his release from this institution so that you may have an officer on hand to take him into custody." (Italics ours.) (T. 140-141.)

Following the appellee's release from the Southern Illinois Penitentiary and commitment on his Federal sentences, he corresponded with the Department of Public Safety, Division of Conviction of the State of Illinois, and received the following letter from the Chief Clerk on October 30, 1941:

"In reply to your letter of October 21, would advise that the file in your case discloses that under date of October 9, 1939, the following order was entered in your case:

'Paroled on Mittimi Nos. 4984 and 239. Effective when the Federal authorities come for him. If not taken case to be referred back to the Board.'

The record further shows that under date of October 31, 1939, you were released to the Federal authorities. The effect of this order and the parole is that upon your release from the institution in which you are now serving, you will be placed on parole by the Division of Supervision of Parolees of the State of Illinois.

I would suggest that thirty days prior to your release date that you contact the parole officer at Menard Branch of the Illinois State Penitentiary, advising him of your release date and he will see to it that you are supplied with the necessary documents for your parole period.

Due to your record you will be required to serve a minimum of four years on parole, being a 'two time loser'.

Trusting the information given you proves helpful, I am * * *'' (Italics ours.) (T. 406-407.)

Appellee had further correspondence with the said Division of Correction of the State of Illinois and received the following letter from the Chief Clerk on August 24, 1942:

“Your letter of August 20, 1942, has been received.

As I advised you in my letter of October 30, 1941, to which you are referred, which was written in reply to your letter of October 21, 1941, whenever you are released from Alcatraz, you will be required to do an Illinois parole, and I suggested you communicate with the Parole Officer at the Menard Division of the Illinois State Penitentiary.

You ask for the necessary parole reports for the first year, including the arrival slip, and you ask for the name of the Parole Officer for Coles County, as you state you intend to live in Mattoon, Illinois, and work in the Brown Shoe Factory, where your brother is a foreman.

I am today sending your letter for attention to Mr. J. L. Lawder, Parole Officer, Menard Division, Illinois State Penitentiary, Menard, Illinois.

I do not know whether or not Mr. Lawder has been advised by the Alcatraz authorities of your pending release date, but it is noted you state you are expecting it soon. Mr. Lawder will be requested to take care of this matter.” (T. 129-130.)

He also received the following letter from the Parole Officer of the Illinois State Penitentiary on August 25, 1942:

“Your letter of August 20 directed to Mr. Robert B. Phillips has been referred to this office for attention and reply.

Upon your arrival in Mattoon, Illinois, contact your district parole agent, Mr. E. B. Vanscoyk, Westfield, Illinois. He will make the necessary arrangements to place you under parole supervision in this state. Also, send notice to this office and we will supply you with parole report blanks.” (T. 132.)

Appellee at the hearing before Judge Denman on the writ of habeas corpus objected to the introduction in evidence of the letters exchanged between the Warden of the Southern Illinois Penitentiary and the acting director of the Bureau of Prisons of the Department of Justice (T. 183-185).

The only other evidence pertinent to the condition of and circumstances surrounding appellee's release from the Illinois State Penitentiary is his testimony at the hearing on the writ. There he testified as follows:

“Q. At the time you were serving that sentence you asked to be paroled from that institution, did you not?

A. Well—

* * * * *

A. The Witness. I will answer, your Honor, yes. I would like to describe the letter.

* * * * *

Q. No, it isn't before us, but it was a letter that you sent on September 3, 1939?

A. Yes.

Q. In it you asked for the detainer to be removed to facilitate your parole, and in which you gave the explanation you just stated to us?

A. That is right, and I would like to state in answer to that that the Parole Board member Richard Dicklin, a former attorney, stated when I was before the Parole Board on a prior hearing, that when I was paroled by the State Parole Board the Federal authorities could not take us until we had served our State parole, and that was stated by a member of the Parole Board. I assume he knows the law of Illinois.

Q. Where did he tell you this?

A. He told me in the Parole Board room.

Q. Who was present at this conversation?

A. The usual Parole Board members. There were three.

Q. Do you recall who they were?

A. Why, yes. Mr. Landesco, Attorney, of Illinois; Robert D. Phillips, chief clerk of the Parole Board, and there was Mr. Hallett—the first names I don't quite remember—of the Parole Board, which were present, and the shorthand reporter was present, too.

Q. When was this hearing?

A. This hearing—I couldn't state the exact month, but 1937.

Q. In 1937, it was the only hearing you had in that year?

A. In that year, yes.

* * * * *

Q. After you wrote the last letter that I mentioned, this letter of September 3rd, did you again come up before the Parole Board?

A. Yes, I did.

Q. Were you given parole?

A. I was paroled.

Q. Do you remember what the terms and conditions of your parole were?

A. Yes, for the rest of my life.

Q. Yes, and what else did they say?

A. They didn't say anything.

Q. Was anything said about your being turned over to the Federal authorities at that time?

A. No.

Q. Nothing at all?

A. Not by the Parole Board members, no.

Q. Who told you that, then?

A. I didn't know until they came and got me the day I was released on parole.

Q. You knew nothing about it until that time?

A. No.

Q. You were in the penitentiary, and then you were released on parole?

A. I was released on parole.

Q. The day you were released on parole, were you surrendered to the custody of any person?

A. Any person?

Q. Yes.

A. When I signed my conditional release, I signed it for my bona fide residence, and that was in the condition that I signed. I signed the parole before I was taken into custody out in front of the prison. I was taken into custody out in front of the prison by the United States Marshal. And I might say that in that letter in response there that you have as Exhibit A it says the Marshal of East St. Louis, Illinois, was holding the commit-

ment. Well, the Marshal was not holding the commitment in East St. Louis, Illinois, but the commitment was being held by Mr. Ryan, United States Marshal of Danville, Illinois. If they had a detainer there, they should know who was held on the commitment.

Q. But you were arrested by the United States Deputy Marshal, is that correct?

A. Yes.

Q. And that was done at the time you left the institution, there?

A. That is right.

Q. Where did you first see the Marshal?

A. I saw him after I got out in the front house of the Administration building of the prison, where they give you your money and your parole officers.

Q. He accompanied you out of the prison, didn't he?

A. When he got me to the gate he put handcuffs on me.

Q. He accompanied you as far as the gate, and after you got to the gate he put handcuffs on you?

A. I would say it wasn't my fault he did.

Q. I am not questioning that, whose fault it was; I am just asking you if that was the factual situation?

A. A man in confinement ordinarily has no legal rights.

Q. I know, but, Mr. Wright, it is true, then, that he accompanied you from the Administration Building to the gate?

A. No, from the gate to the automobile.

Q. Did you see him in the Administration Building?

The Court. Q. Do I understand that he met you at the gate and accompanied you to the automobile?

A. That is right, your Honor.

Q. You had not seen him before when he met you at the gate?

A. No.

Mr. Zirpoli. Q. You had not seen him at the Administration Building?

A. He wasn't in the Administration Building, back in the Warden's Office where I signed the parole.

The Court. Q. As soon as you were released on parole and just free, he took you?

A. That is right, your Honor.

Mr. Zirpoli. Q. And then you were taken to Leavenworth and ultimately transferred to Alcatraz?

A. I objected to him taking me out of there and he said he had a detainer on me. I had one more year, he said, to serve on my Federal sentence. My sentence was running concurrent. The United States Marshal said that, himself. Of course, I would say—I don't know whether it would be true, or not—but I would say this—

* * * * *

Q. Do you know, yourself, how long you had to serve under that sentence?

A. Not at the time, because Judge Lindley had previously wrote me at the prison in 1935 and told me my sentence was running. He told me my sentence had begun to run.

Q. You mean your Illinois sentence was still running?

A. The Federal sentence. I was in the Illinois State Prison and serving concurrently my Illinois sentence.

Mr. Zirpoli. Q. Let me ask you something about that: Did you tell Judge Lindley that your Federal sentence was running, or did he write you and say your term had expired for modification of your sentence?

A. He said in these words—I wrote him applying for a writ of habeas corpus——

Q. Yes.

A. He said he had lost jurisdiction over my case after the expiration of the term of court in which I was convicted, and especially after sentence had begun to run.

* * * * *

Q. Do you have the letter of Judge Lindley?²

²The letters of Judge Walter C. Lindley sent to appellee and referred to in the testimony of appellee respectively recite in part as follows:

Letter of December 26, 1939:

"I have your letter of December 22. As I have previously advised you, the jurisdiction of a trial judge over a case ends when sentence begins. He has no more power of authority over your sentence than the man of the street. Your remedy, as I previously advised you, lies in petition for parole or petition for commutation of sentence. Relief under each of these must be made by authorities other than the court." (T. 248-249.)

Letter of January 22, 1940:

"The law is, as I have previously said, that once a defendant has entered upon the service of his term, the trial court has no more jurisdiction over him than the man in the street. It is not necessarily the expiration of the term at which the trial occurred that terminates the jurisdiction,—it is the commencement of the execution of the sentence. The Supreme Court of the United States has many times so decided. The only exception to this rule occurs where the trial court suspends at least a part of the sentence for a definite period in the future and retains jurisdiction. As this did not occur in

A. You have it in the deposition. You have Judge Lindley's deposition about that letter.

Q. In which he said the term of court had expired——

A. And in which he said the sentence had begun. You have that in the deposition." (T. 186-195.)

On the facts above recited Judge Denman exercised the discretion granted him under the habeas corpus statutes, entertained the petition, issued the writ of habeas corpus, and after hearing thereof, ordered the appellee discharged from further custody.

QUESTIONS.

The ultimate question involved is:

Did Judge Denman err when he ordered the appellee discharged from the custody of appellant?

We respectfully submit that he did err, for two reasons:

1. The Federal sentences began to run from the time appellee was released from the Southern Illinois State Penitentiary and taken into custody by the United States Marshal.

2. If appellee's sentences did not commence to run, as stated in the paragraph immediately above, then

your case, my power is at an end and your remedy lies with the executive authorities for executive clemency or parole.

If you believe that your incarceration is wrongful under the constitution, you have a right to test it by habeas corpus proceedings in the United States Court where you are located, but you cannot proceed here." (T. 249-250.)

the time of the commencement of said sentences is so indefinite as to render execution thereof impossible and requires not that appellee be discharged but that he be remanded to the trial Court to have the date when the said sentences shall be executed, definitely stated.

ARGUMENT.

Appellee's Present Commitment Under the Federal Sentences Is Proper.

The judgment imposed by the trial Court in case No. 11,032 on September 17, 1930, after a recital of the sentence, states specifically:

“It is further ordered by the Court that the sentences herein imposed shall begin upon the expiration of the sentences which the said defendants are now serving *in the Southern Illinois Penitentiary.*” (Italics ours.) (T. 127 and 339.)

The judgment imposed on the same day by the trial Court in case No. 11,074, specifically states:

“It is, therefore, considered and adjudged by the Court, that the said defendant Cecil Wright alias Tuck Wright, for the offense by him committed in manner and form as charged in the indictment, and as by him confessed, be imprisoned in the United States Penitentiary at Leavenworth, Kansas, for the period of five years, *said sentence to run and be served consecutively with the sentence imposed against the said defendant in case No. 11,032,* and that said defendant be committed to said Penitentiary pursuant to said sentence.” (Italics ours.) (T. 117.)

Are such sentences valid?

The authorities are numerous that sentences of this type are valid. We respectfully refer this Court to the case of

Ex Parte Lamar, 274 Fed. 160,
where the same point was decided by the Second Circuit. There the Court said:

“It is there clearly expressed that the Judge fixed the commencement of service after the expiration of Lamar’s term at Atlanta. No authority supports the claim that Judge Cushman was prohibited from fixing the date of the commencement of this term to such future date. To hold otherwise would be making a mockery of the law and to stultify the course of justice.”

We also find the same principle of law laid down in this Circuit, where Judge Gilbert expressed the rule as follows:

“In the present case the judgment, in providing that imprisonment should begin at the expiration of a sentence that precedes it, accords with the recognized practice, and it cannot be said to be void for uncertainty, ‘since it is as certain as the nature of the matter will permit’. 16 C. J. 1306, *Howard v. United States*, 75 F. 986.”

Austin v. United States, 19 Fed. (2d) 127.

A more recent expression of the rule can be found in this Circuit in the case of *McNealy v. Johnston*, 100 Fed. (2d) 280. This case involved another petitioner from Alcatraz who raised the same point as here raised by this petitioner. In that case Judge Stephens in

writing the opinion, quoted the sentence imposed upon McNealy as follows:

“It is, therefore, Ordered and Adjudged by the Court that James McNeeley alias James McNealy be, and he is sentenced to imprisonment in the Atlanta Penitentiary for a period of Three (3) Years, the serving of said sentence to begin at the expiration of the sentence he is now serving for the Southern District of Florida.”

In commenting upon this sentence Judge Stephens used the following language:

“It has often been held by the Courts that when two or more sentences are imposed against the same person to imprisonment in the same institution, or the same type of institution, the presumption is that they are to be served concurrently rather than consecutively, unless the contrary clearly appears. Any reasonable doubt or ambiguity on that point is resolved in favor of the defendant. On the other hand, a judgment must be reasonably construed in accordance with the intent of the trial court, if the language discloses such intent clearly and without doubt or obscurity.”

* * * * *

“We think there is no serious uncertainty in the language of the trial court, ‘the serving of said sentence to begin at the expiration of the sentence he is now serving for the Southern District of Florida’. We therefore hold that the sentence imposed by the Alabama court is valid.”

McNealy v. Johnston, supra.

If these sentences are valid as the above authorities indicate, when do they commence to run?

To determine this we must construe these sentences “reasonably” and “in accordance with the intent of the trial Court, if the language discloses such intent clearly and without doubt or obscurity”.

McNealy v. Johnston, supra.

Or as the Supreme Court said in

United States v. Daugherty, 269 U. S. 360, 363:

“Sentences in criminal cases should reveal with fair certainty the intent of the court and exclude any serious misapprehensions by those who execute them. *The elimination of every possible doubt cannot be demanded.* Tested by this standard the judgment here questioned was sufficient to impose total imprisonment for fifteen years made up of three five-year terms, one under the first count, one under the second and one under the third, to be served consecutively and to follow each other in the same sequence as the counts appeared in the indictment. *This is the reasonable and natural implication from the whole entry.* The words, ‘said term of imprisonment to run consecutively and not concurrently’, are not consistent with a five-year sentence.” (Italics ours.)

If the purpose of imprisonment is the maintenance of physical custody (restraint) over the person of the defendant, what “is the reasonable and natural implication from the whole entry” of Judge Lindley, the trial Judge?

The trial Judge, by stating that the sentences imposed by him shall begin to run upon the expiration of the sentences which the said defendants are now serving *in* the Southern Illinois Penitentiary, reason-

ably intended that Federal physical custody of appellee, together with his co-defendants, should commence when physical custody in the Southern Illinois Penitentiary terminated. It cannot reasonably be said that Judge Lindley intended that appellee and his co-defendants might at any time be released on parole for a period possibly as long as life without being subject to any physical restraint by the Federal authorities under Federal laws.³ This latter construction

³The laws of Illinois governing the parole of prisoners in force at the time of appellee's release from the Southern Illinois Penitentiary on October 31, 1939, can be found in Sections 801 to 810 inclusive of Chapter 38 of the Illinois Annotated Statutes (Smith-Hurd). The pertinent portions of Section 807 provide:

"The said Department of Public Welfare shall have power, and it shall be its duty, to establish rules and regulations under which prisoners in the Illinois State Penitentiary * * * may be allowed to go upon parole outside of the institutional buildings and enclosures; provided, that no prisoner or ward shall be released from either the penitentiary or the reformatory for women, or such other institution herein in this Act mentioned until the Department of Public Welfare shall have made arrangements or shall have satisfactory evidence that arrangements have been made for his or her honorable and useful employment while upon parole in some suitable occupation and also for a proper and suitable home free from criminal influences and without expense to the State; and, provided, further, that all prisoners, and wards so temporarily released upon parole, shall, at all times, until the receipt of their final discharge, be considered in the legal custody of the officers of the Department of Public Welfare, and shall, during the said time, be considered as remaining under conviction for the crime or offense of which they were convicted and sentenced or committed and subject to be taken at any time within the enclosure of such penitentiary, reformatory and institution herein mentioned. Full power to enforce such rules and regulations and to retake and reimprison any inmate so upon parole is hereby conferred upon the officers and employees of the Department of Public Welfare.

* * * * *

That no prisoner or ward sentenced and committed, or committed, under a general or indeterminate sentence, shall be eligible to parole after his or her commitment in the peniten-

would not in our humble opinion be reasonable and would only do violence to the true intent of the trial judge.

Judge Denman intimates in his opinion that appellee may have been seized and unlawfully committed by the Federal authorities (T. 214) without the consent or approval of the State of Illinois. Appellant contends that even if this were so, nevertheless the right to complain is not personal to appellee.

In

Wall v. Hudspeth, 108 F. (2d) 865, 866,
the Court said:

tiary, reformatory for women or State institution in this Act mentioned, until he or she shall have served the minimum term of imprisonment provided by law for the crime or offense of which he or she was sentenced and stands convicted or committed, less good time allowed as provided by law. In all cases of definite sentence provided for in section one of this Act, persons sentenced for life or for a definite term of imprisonment may be paroled in the discretion of the Department of Public Welfare; *persons sentenced for life may be eligible to parole at the end of twenty years*; persons not sentenced for life but sentenced for a definite term of years shall not be eligible to parole until he or she shall have served the minimum sentence provided by law for the crime for which he or she was convicted, good time being allowed as provided by law, nor until he or she shall have served at least one-third of the time fixed in said definite sentence. (1917, June 25, Laws 1917, p. 353, §7; Laws 1919, p. 436, §1; Laws 1929, p. 356, §1; 1933, June 30, Laws 1933, p. 484, §1." (Italics ours.)

Section 810 provides:

"It shall be the duty of the Department of Public Welfare to keep in communication, as far as possible, with all prisoners and wards who are on parole from the penitentiary, reformatory for women, or other institution for the incarceration, punishment, discipline, training or reformation, also with the employers of such prisoners or wards, and *when, in the opinion of the Department of Public Welfare, any prisoner or ward who has served not less than six months of his or her*

“Represented by counsel, he entered a plea of guilty and was sentenced on the first count to serve a term of three years in the penitentiary, to commence at the expiration of a sentence of from fourteen to twenty-eight years in the penitentiary of the State of Louisiana which he was then serving. Imposition of sentence on the remaining counts was suspended for a period of five years. About nine months later a commitment issued on such judgment and sentence; petitioner was delivered to respondent, as warden of the penitentiary at Leavenworth, under such process; and he is being detained under it.

* * * * *

Petitioner contends that the United States Court was without jurisdiction to impose sentence

parole acceptably (the Department of Public Welfare may require a longer service upon parole) has given such evidence as is deemed reliable and trustworthy that he or she will remain at liberty without violating the law and that his or her final release is not incompatible with the welfare of society; and whenever it shall be made to appear to the satisfaction of the Department of Public Welfare that any prisoner or ward has faithfully served his or her term of parole and the Department of Public Welfare shall have information that such prisoner or ward can safely be trusted to be at liberty and that his or her final release will not be incompatible with the welfare of society, *the Department of Public Welfare shall have power to cause to be entered of record in its department an order discharging such prisoner or ward* for or on account of his or her conviction or commitment, which said order when approved by the Governor shall operate as a complete discharge of such prisoner or ward, in the nature of a release or commutation of his or her sentence, to take effect immediately upon delivery of a certified copy thereof to the prisoner or ward, and the clerk of the court in which the prisoner or ward was convicted or committed shall, upon presentation of such certified copy, enter the judgment of such conviction or commitment satisfied and released pursuant to said order.”

These sections were amended in 1941 and the functions of the Department of Public Welfare were turned over and assigned to the Division of Correction.

upon him while he was serving the term in the penitentiary of the state, and that for such reason the sentence is void. When the court of one sovereign takes a person into its custody on a criminal charge he remains in the jurisdiction of that sovereign until it has been exhausted, to the exclusion of the courts of the other sovereign. That rule rests upon principles of comity, and it exists between federal and state courts. *Ponzi v. Fessenden*, 258 U. S. 254, 42 S. Ct. 309, 66 L. Ed. 607, 22 A.L.R. 879; *Grant v. Guernsey*, 10 Cir., 63 F. 2d 163; certiorari denied 289 U. S. 744, 53 S. Ct. 688, 77 L. Ed. 1491. But either the federal or a state government may voluntarily surrender its prisoner to the other without the consent of the prisoner, *and in such circumstances the question of jurisdiction and custody is purely one of comity between the two sovereigns, not a personal right of the prisoner which he can assert in a proceeding of this kind.* *Ponzi v. Fessenden*, supra; *In re Andrews*, D.C. 236 F. 300.” (Italics ours.)

Here, however, the exchange of letters between the Warden of the Illinois Penitentiary and the Acting Director of the Bureau of Prisons⁴ clearly shows that the State of Illinois voluntarily surrendered the custody of appellee to the Federal authorities. If this evidence were not enough, then we have appellee’s Exhibit “F”, which shows that appellee was

“*Paroled on Mittimi Nos. 4984 and 239. Effective when the Federal authorities come for*

⁴Copies of these letters submitted under the seal of the Department of Justice were properly admissible in evidence under the provisions of Section 661 of Title 28 U. S. C. A.

him. If not taken case to be referred back to the Board." (Italics ours.) (T. 407.)

There is nothing in the entire record which shows that appellee's surrender by the State of Illinois was not deliberately planned and voluntary. The fact that appellee was voluntarily surrendered to the Federal authorities makes the case of *Wall v. Hudspeth*, supra, clearly applicable and controlling in the present case and would justify a denial of the petition for writ of habeas corpus.

If Appellee's Federal Sentences Are Not Now Running Appellee Should Be Remanded to the Trial Court.

If appellee's present commitment at Altatraz is not proper and his Federal sentences have not commenced to run, then he should be remanded to the trial Court to there have the time when his Federal sentences shall run, clearly fixed.

Judge Denman says:

"The Warden's contention does violence to the plain language of the sentence. However, were it correct, the federal sentence would be void for uncertainty". (T. 215.)

With this conclusion of Judge Denman we cannot agree. The Federal sentences *are not* void for uncertainty since the terms are definitely fixed—ten years on indictment No. 11,032 and five years on indictment No. 11,074, to run and be served consecutively with the sentence imposed in case No. 11,032. All that possibly remains uncertain is the time when these sentences shall commence to run, and since these sentences

could never run while appellee is on parole, which might conceivably be for the remainder of his life (T. 186), the failure to fix a time certain when the sentences shall commence to run is a mere matter of form which may be changed by the convicting Court at any time. The authorities on this are clear and numerous. See:

Bernstein v. United States, 254 Fed. 967 (C. C. A. 4), certiorari denied, 242 U. S. 653 (or 249 U. S. 604);

Ex parte Aubert, 51 F. (2d) 136, 138 (N. D. Cal.), 29 F. (2d) 852 (W. D. Wash.);

Fels v. Snook, 30 F. (2d) 187 (N. D. Ga.);

Sengstack v. Hill, 16 F. Supp. 61, 62 (M. D. Pa.);

cf. Zerbst v. McPike, 97 F. (2d) 253 (C. C. A. 5);

Lundsford v. Hudspeth, 126 F. (2d) 653 (C. C. A. 10);

Corollo v. Dutton, 63 F. (2d) 7, 9 (C. C. A. 5);

Rohr v. Hudspeth, 105 F. (2d) 747 (C. C. A. 10);

Miller v. Zerbst, 21 F. Supp. 1015 (N. D. Ga.);

Schwab v. Berggen, 143 U. S. 442, 451;

Holden v. Minnesota, 137 U. S. 483, 495.

From the above we may properly conclude that appellee is not entitled to his discharge, but at most may be remanded to the trial Court for the purpose of having the date for the commencement of his sentences clearly and specifically stated. This Judge Denman failed to do in his order.

CONCLUSION.

The very nature of the sentences of the trial Court—imprisonment in a penitentiary at the termination of a sentence being served *in* a state penal institution—clearly indicates the intent of the trial Court to have Federal physical restraint commence at the conclusion of state physical restraint, and the appellee, having been voluntarily surrendered by the state to the Federal authorities, is now properly in appellant's custody.

Furthermore, if the trial Court did not so intend, the execution date of the Federal sentences is so uncertain as to require a definite fixing thereof by the convicting Court.

In either event, the appellee is not entitled to a discharge from the custody of appellant and the order of Judge Denman should therefore be reversed.

Dated, San Francisco,
March 22, 1943.

Respectfully submitted,

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Attorneys for Appellant.

No. 10,331

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IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

JAMES A. JOHNSTON, Warden, United
States Penitentiary, Alcatraz, Cali-
fornia,

Appellant,

VS.

CECIL WRIGHT,

Appellee.

APPELLANT'S REPLY BRIEF.

FRANK J. HENNESSY,

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FILED

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PAUL P. O'BRIEN,
CLERK

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Appellant,

VS.

CECIL WRIGHT,

Appellee.

APPELLANT'S REPLY BRIEF.

Appellee in his brief not only contends that his federal sentences have not yet begun to run, but goes further and asserts that they are void because he was denied certain constitutional rights, to-wit, the right to assistance of counsel for his defense, the right to compulsory process to secure witnesses in his behalf, and the right to all the incidents of a fair and impartial jury trial (due process), by the trial Court.

These latter contentions of appellee were not passed upon by Judge William Denman at the time he made the order from which this appeal is taken. All that Judge Denman said in this regard was:

“His fifteen years of federal sentences will have to be served after the termination of the Illinois

sentence, unless his contention be later maintained that his ten year sentence is invalid.

Wright claims the ten year federal sentence is void because the attorney assigned him by the district court also represented other persons tried with him who had given confessions used at the trial, which confessions involved his participancy in the crime charged. He claims such an attorney would prejudice him with the jury and that he would not be free to conduct a defense with a singleness of purpose the law requires. *Glasser v. United States*, 315 U.S. 60.

There is no evidence upon which Wright's five year sentence, coming after a signed confession to the federal officers and a plea of guilty, may be held invalid. Not having served that sentence, the claimed invalidity of the ten year sentence cannot be entertained in a habeas corpus proceeding. *McNally v. Hill*, 293 U.S. 131." (T. 220-221.)

No evidence was taken before Judge Denman on these constitutional issues, excepting so much of the evidence pertinent thereto as was incorporated into the present record by reference to the last case before District Judge A. F. St. Sure (No. 23,647-S). Judge Denman made no findings of fact on these issues.

If this Honorable Court is of the opinion that there is merit to these contentions of appellee and that they have been properly and sufficiently stated in the petition for writ of habeas corpus, the case should be remanded to Judge Denman for the reception of evidence thereon and the making of findings of fact upon the issues raised by the evidence.

No effort will be made to answer these constitutional questions since they are not now properly before this Court and do not constitute the basis for the order of Judge Denman.

Judge Denman concluded that the federal sentences of appellee have not commenced to run and that he is therefore not properly in the custody of appellant at this time.

The only questions before this Court then are:

Have the federal sentences of appellee commenced to run?

If the federal sentences of appellee are not now running, should he be discharged or remanded to the trial Court?

These two questions have been answered in our opening brief.

As appears therefrom:

1. Appellee's federal sentences began to run from the time he was released from the Southern Illinois Penitentiary and taken into custody by the United States Marshal.

2. If appellee's federal sentences are not now running, they are so uncertain as to the date of their commencement as to require, not that appellee be discharged, but that he be remanded to the trial Court for the purpose of having the date of the commencement of his sentences clearly and specifically stated.

Before closing, appellant again reiterates that if Judge Denman's conclusion that "the true construc-

tion (of federal sentences) makes the federal sentences valid" is correct, then the right to complaint of appellee's present confinement on those sentences is not personal to him but is a right which only the State of Illinois can assert.

Ponzi v. Fessenden, 258 U.S. 254, 260;

Wall v. Hudspeth (CCA-10), 108 F. (2d) 865, 866;

United States ex rel. Moore v. Traeger (CCA-9), 44 F. (2d) 312, 313;

United States v. Farrell (CCA-8), 87 F. (2d) 957, 962.

The only case which on its facts might indicate that appellee has a right to complain as to his present custody by appellant is

Grant v. Guernsey (CCA-8), 63 F. (2d) 163.

There, however, the Court acted upon the general rule of comity that the sovereign which first arrests and imprisons a criminal cannot without its consent be deprived of his custody, without considering whether or not the right to complain is personal to the criminal, a factor which, as pointed out in

United States v. Farrell, *supra*, it should have taken into consideration.

Grant v. Guernsey, *supra*, is cited with approval in *United States v. Toman*, 23 F. Supp. 119.

However in that case the petition for writ of habeas corpus was not sought by the criminal, but by the United States, the sovereign which first acquired jurisdiction over him.

Under the authorities cited, including the decisions of the Supreme Court and this Honorable Court, it should be perfectly clear that appellant cannot complain of his present confinement at Alcatraz, and the only person who can complain is the State of Illinois.

CONCLUSION.

Appellee's federal sentences are valid, were intended to commence to run upon his release from the Southern Illinois Penitentiary, and constitute legal cause and justification for his present continued detention by appellant.

Furthermore, if appellee's federal sentences are not valid or have not yet commenced to run, he is not now entitled to his discharge but is at most only entitled to be remanded to the trial Court for the purpose of resentence or the fixing of a definite and certain date for the commencing of his sentences.

In either event, the order of Judge Denman discharging appellee is erroneous and should be reversed.

Dated, San Francisco,

April 19, 1943.

Respectfully submitted,

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Attorneys for Appellant.

